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Titles 78 through 91

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REVISED CODE OF WASHINGTON

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Containing all laws of a general and permanent nature through the 1987 3rd extraordinary session, which adjourned sine die October 10, 1987.

REVISED CODE OF WASHINGTON
1987 Edition

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CERTIFICATE

The 1987 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)
RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE

PREFACE

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

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04-.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

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

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

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

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

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

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

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

(2) Although considerable care has been used in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected or are believed to exist in particular sections, by those who use this code, it is requested that a note citing the section involved and the nature of the error be mailed to: Code Reviser, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

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Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

- 78.04** Mining corporations.
- 78.06** Mining claims—Survey reports.
- 78.08** Location of mining claims.
- 78.12** Abandoned shafts and excavations.
- 78.16** Mineral and petroleum leases on county lands.
- 78.22** Extinguishment of unused mineral rights.
- 78.40** Coal mining code.
- 78.44** Surface mining.
- 78.52** Oil and gas conservation.

Reviser's note: The powers, duties, and functions of the department of conservation in respect to mining as set forth in Title 78 RCW were transferred to the department of natural resources by 1967 c 242 § 14 (RCW 43.27A.120).

Appropriation of water for industrial purposes: RCW 90.16.020.

Assay—Altering or making false sample or certificate: RCW 9.45-.210, 9.45.220.

Boilers and unfired pressure vessels: Chapter 70.79 RCW.

Bureau of statistics: Chapter 43.07 RCW.

Department of natural resources: Chapter 43.30 RCW.

Department of trade and economic development: Chapter 43.31 RCW.

Explosives: Chapter 70.74 RCW.

Franchises on county roads and bridges: Chapter 36.55 RCW.

Geological survey: RCW 43.27A.130, chapter 43.92 RCW.

Geology supervisor: RCW 43.21.040, 43.21.050, and 43.27A.130.

Industrial safety and health: Chapter 49.17 RCW.

Labor liens on franchises, earnings, and property of certain companies: Chapter 60.32 RCW.

Measurement of oil, gas, coal products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Mine inspectors, state: RCW 43.22.200, 43.22.210.

Mines, supervisor: RCW 43.21.060 through 43.21.090, 43.27A.120.

Operating engine or boiler without spark arrester: RCW 9.40.040.

Pipe lines, oil and gas: Chapter 81.88 RCW.

Private ways of necessity: Chapter 8.24 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Public lands

applications for federal certification that lands are nonmineral: RCW 79.01.308.

relinquishment to United States in certain cases of reserved mineral rights: RCW 79.08.110.

sales and leases, reservation in contract: RCW 79.01.224.

Public utilities, gas, electrical and water companies: Chapter 80.28 RCW.

Supervisor of industrial safety and health: RCW 43.22.040.

Underground storage of natural gas: Chapter 80.40 RCW.

Use of waters for irrigation, mining, manufacturing, deemed a public use: State Constitution Art. 21.

78.04.040 Right of stockholder to enter and examine property.

78.04.050 Penalty for violations under RCW 78.04.040.

78.04.010 Right of eminent domain. The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works. [1897 c 60 § 1; RRS § 8608. FORMER PART OF SECTION: 1897 c 60 § 2; RRS § 8609 now codified as RCW 78.04.015.]

Water rights—Appropriation for industrial (mining) purposes: RCW 90.16.020 and 90.16.030.

78.04.015 Right of entry. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1897 c 60 § 2; RRS § 8609. Formerly RCW 87.04.010, part.]

78.04.020 Manner of exercising right of eminent domain. Every such corporation shall have the right to appropriate real estate or other property for right of way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1897 c 60 § 3; RRS § 8610.]

Eminent domain by corporations: Chapter 8.20 RCW.

78.04.030 No stock subscription necessary. In corporations already formed, or which may hereafter be formed under *this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be

Chapter 78.04

MINING CORPORATIONS

Sections

- 78.04.010 Right of eminent domain.
- 78.04.015 Right of entry.
- 78.04.020 Manner of exercising right of eminent domain.
- 78.04.030 No stock subscription necessary.

or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its bylaws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: *Provided*, That the greater portion of said amount of capital stock shall have been so subscribed: *And, provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by bylaws or express contract. [Code 1881 § 2446; 1873 p 407 § 26; 1869 p 339 § 28; 1866 p 65 § 28; RRS § 8611.]

***Reviser's note:** The two remaining sections of "this chapter" (Code 1881 c CLXXXV) are codified in RCW 78.04.030 above and RCW 90.16.010.

78.04.040 Right of stockholder to enter and examine property. Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purposes of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation. [1901 c 120 § 1; RRS § 8612.]

78.04.050 Penalty for violations under RCW 78.04.040. Any violation of any of the provisions of RCW 78.04.040 by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense. [1901 c 120 § 2; RRS § 8613.]

[Title 78 RCW—p 2]

Chapter 78.06

MINING CLAIMS—SURVEY REPORTS

Sections

- 78.06.010 Definitions.
78.06.020 Duplicate survey reports to be filed with county auditor—Contents.
78.06.030 Auditor to forward survey reports to division of mines and geology.

Holding claim by geological, etc., survey—Reports: RCW 78.08.072.

78.06.010 Definitions. Words or terms used herein have the following meanings:

(1) "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.

(2) "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.

(3) "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations. [1959 c 119 § 1.]

78.06.020 Duplicate survey reports to be filed with county auditor—Contents. All reports of geological, geophysical, or geochemical surveys on mining claims which may be filed with the auditor of any county in this state pursuant to United States Public Law 85-876 or amendments or revisions thereto shall be so filed in duplicate, and shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1959 c 119 § 2.]

78.06.030 Auditor to forward survey reports to division of mines and geology. All county auditors receiving for filing duplicate copies of geological, geochemical, and geophysical survey reports on mining claims shall forward, monthly, one copy of each report received to the division of mines and geology of the department of conservation. [1959 c 119 § 3.]

Chapter 78.08

LOCATION OF MINING CLAIMS

Sections

- 1887 ACT
78.08.005 Prior claims, how governed.

- 78.08.020 Extent of lode claims.
 78.08.030 Rights of locators.
 78.08.040 Recording instruments affecting claim.
- 1899 AND LATER ACTS
- 78.08.050 Location notices—Contents—Recording.
 78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search.
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 78.08.072 Holding claim by geological, etc., survey—Report of survey.
 78.08.075 "Lode" defined.
 78.08.080 Amended certificate of location.
 78.08.081 Assessment work, affidavit of work performed.
 78.08.082 Affidavit is prima facie evidence.
 78.08.090 Relocating abandoned claim.
 78.08.100 Location of placer claims.
 78.08.110 Affidavit as proof.
 78.08.115 Application of RCW 78.08.050 through 78.08.115.

1887 ACT

78.08.005 Prior claims, how governed. All mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of such location. [1887 c 87 § 1; RRS § 8615.]

For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336. See also, act of congress, May 10, 1872.

78.08.020 Extent of lode claims. A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits, after the approval of *this act by the governor, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claims shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claims be limited by any mining regulation to less than fifty feet of surface on each side of the middle of such vein or lode at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitation necessary. The end lines of each claim shall be parallel to each other. [1887 c 87 § 2; RRS § 8616.]

*Reviser's note: "this act" [1887 c 87], is codified in RCW 78.08-.005 through 78.08.040; "date of the approval of this act" was February 2, 1888.

78.08.030 Rights of locators. The locators of all mining locations heretofore made or hereafter made under the provisions of RCW 78.08.005 through 78.08.040, on any mineral vein, lode or ledge on the public domain, and their heirs and assigns so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes

and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location. [1887 c 87 § 3; RRS § 8617.]

78.08.040 Recording instruments affecting claim. All location notices, bonds, assignments and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated within thirty days after the execution thereof. [1979 ex.s. c 30 § 15; 1887 c 87 § 7; RRS § 8621.]

1899 AND LATER ACTS

78.08.050 Location notices—Contents—Recording. The discoverer of a lode shall within ninety days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. [1899 c 45 § 1; RRS § 8622.]

For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336, 1887 c 87; see also, act of congress, May 10, 1872.

78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search. (1) Before filing such notice for record, the discoverer shall locate his claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work. [1965 c 151 § 1; 1963 c 64 § 1; 1949 c 12 § 1; 1899 c 45 § 2; RRS § 8623.]

78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft. Any open cut, excavation or tunnel which cuts or exposes a lode and from which a total of two hundred cubic feet of material has been removed or in lieu thereof a test hole drilled on the lode to a minimum depth of twenty feet from the collar, shall hold the lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto. [1955 c 357 § 1; 1899 c 45 § 3; RRS § 8624.]

78.08.072 Holding claim by geological, etc., survey—Report of survey. Any geological, geochemical, or geophysical survey which reasonably involves a direct expenditure on or for the benefit of each claim of not less than the one hundred dollars worth of annual assessment work required under federal statute or regulations shall hold such claim for not more than two consecutive years or more than a total of five years: *Provided*, That a written report of such survey shall be filed with the county auditor at the time annual assessment work is recorded as required under federal statute, and said written report shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery or location notice and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1965 c 151 § 2; 1963 c 64 § 2; 1959 c 114 § 1.]

Reports of geological, etc., surveys: Chapter 78.06 RCW.

78.08.075 "Lode" defined. The term "lode" as used in RCW 78.08.050 through 78.08.115 shall be construed to mean ledge, vein or deposit. [1983 c 3 § 197; 1899 c 45 § 4; RRS § 8625. Formerly RCW 78.08.010.]

78.08.080 Amended certificate of location. If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the *passage of this law, and he shall be desirous of securing the benefits of RCW 78.08.050 through 78.08.115, such locator or his assigns may file an amended certificate of location, subject to the provisions of RCW 78.08.050 through 78.08.115, regarding the making of new locations. [1983 c 3 § 198; 1899 c 45 § 5; RRS § 8626.]

***Reviser's note:** "passage of this law": 1899 c 45 (H.B. 272) passed the house, February 27, 1899; passed the senate, March 7, 1899, and was approved by the governor March 8, 1899.

78.08.081 Assessment work, affidavit of work performed. Within thirty days after the expiration of the

period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law made thereon. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1979 ex.s. c 30 § 16; 1955 c 357 § 3; 1899 c 45 § 6; RRS § 8627.]

78.08.082 Affidavit is prima facie evidence. Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state. [1899 c 45 § 7; RRS § 8628.]

78.08.090 Relocating abandoned claim. The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft, or in lieu thereof performing at least an equal amount of development work within the borders of the claim, and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected. [1949 c 12 § 2; 1899 c 45 § 8; RRS § 8629.]

78.08.100 Location of placer claims. The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (1) the name of the claim; (2) the name of the locator or locators; (3) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (4) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which

such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

Third. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: *Provided, however,* That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [1901 c 137 § 1; 1899 c 45 § 10; RRS § 8631.]

78.08.110 Affidavit as proof. The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of RCW 78.08.081 and 78.08.082 shall apply to placer claims as well as lode claims. [1899 c 45 § 11; RRS § 8632.]

78.08.115 Application of RCW 78.08.050 through 78.08.115. All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of RCW 78.08.050 through 78.08.115 insofar as the same are respectively applicable thereto. [1983 c 3 § 199; 1899 c 45 § 12; RRS § 8633.]

Chapter 78.12

ABANDONED SHAFTS AND EXCAVATIONS

Sections

- 78.12.010 Shafts, excavations to be fenced.
- 78.12.020 Complaint—Contents.
- 78.12.030 Order to serve notice.
- 78.12.040 Notice—Contents—Civil and criminal penalties.
- 78.12.050 Suit in name of state—Disposition of proceeds.
- 78.12.060 Procedure when shaft unclaimed.
- 78.12.061 Safety cage in mining shaft—Regulations.
- 78.12.062 Safety cage in mining shaft—Penalty.
- 78.12.070 Damage actions preserved.

78.12.010 Shafts, excavations to be fenced. Any person or persons, company, or corporation who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation or hole, whether used for mining or otherwise, or whether dug, sunk or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking or excavating, or after they have ceased work upon

or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations. [1890 p 121 § 1; RRS § 8857.]

78.12.020 Complaint—Contents. Three persons being residents of the county, and knowing or having reason to believe that the provisions of RCW 78.12.010 are being or have been violated within such county, may file a notice with any district or municipal court therein, which notice shall be in writing, and shall state— First, the location, as near as may be, of the hole, excavation or shaft. Second, that the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter. Third, the name of the person or persons, company or corporation who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth, if abandoned and no claimant; and Fifth, the estimated cost of fencing or otherwise securing the same against any avoidable accidents. [1987 c 202 § 231; 1987 c 3 § 19; 1890 p 121 § 2; RRS § 8858.]

Severability—1987 c 3: See note following RCW 3.46.020.
Intent—1987 c 202: See note following RCW 2.04.190.

78.12.030 Order to serve notice. Upon the filing of the notice, as provided in RCW 78.12.020, the district or municipal court shall issue an order, directed to the sheriff of the county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons or the authorized agent or agents of any company or corporation named in the notice on file, as provided in RCW 78.12.020. [1984 c 258 § 139; 1890 p 121 § 3; RRS 8859.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Application—1984 c 258 §§ 101–139: See note following RCW 3.50.005.

78.12.040 Notice—Contents—Civil and criminal penalties. The notice thus served shall require the said persons to appear before the judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this chapter have been complied with; or if said person or persons fail to appear, judgment will be entered against said person or persons for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this chapter, which judgments and fines shall be adjudged and collected as provided for by law. [1987 c 202 § 232; 1890 p 122 § 4; RRS § 8860.]

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

78.12.050 Suit in name of state—Disposition of proceeds. Suits commenced under the provisions of this chapter shall be in the name of the state of Washington, and all judgments and fines collected shall be paid into the county treasury for county purposes: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 233; 1969 ex.s. c 199 § 34; 1890 p 122 § 5; RRS § 8861.]

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

Disposition of costs, fines, fees, penalties, and forfeitures: RCW 10.82.070.

78.12.060 Procedure when shaft unclaimed. If the notice filed with the district or municipal court, as aforesaid, shall state that the excavation, shaft or hole has been abandoned, and no person claims the ownership thereof, the court shall notify the county legislative authority of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: *Provided*, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence or otherwise guard any shaft, excavation or hole, unless in their discretion, the same may be considered dangerous to persons or animals. [1987 c 202 § 234; 1987 c 3 § 20; 1890 p 122 § 6; RRS § 8862.]

Severability—1987 c 3: See note following RCW 3.46.020.

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

78.12.061 Safety cage in mining shaft—Regulations. It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft. [1890 p 123 § 7; RRS § 8863. Formerly RCW 78.36.850, part.]

Hoisting apparatus—Requirements: RCW 78.40.273.

Human capacity of cages—Attendant: RCW 78.40.287.

78.12.062 Safety cage in mining shaft—Penalty. Any person or persons, company or companies, corporation or corporations, who shall neglect, fail or refuse to comply with the provisions of RCW 78.12.061, shall be

guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars. [1890 p 123 § 8; RRS § 8864. Formerly RCW 78.36.850, part.]

78.12.070 Damage actions preserved. Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [1890 p 123 § 9; RRS § 8865.]

Chapter 78.16

MINERAL AND PETROLEUM LEASES ON COUNTY LANDS

Sections

78.16.010	Leases authorized.
78.16.020	Order for lease—Terms—Option to purchase.
78.16.030	Sale and conveyance.
78.16.040	Option to surrender lands.
78.16.050	Disposition of royalties and rentals.
78.16.060	Surface rights.
78.16.070	Damages to owner.

78.16.010 Leases authorized. Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of said county and the taxing districts and the people thereof, that any mining claims, reserved mineral rights, or any other county owned or tax acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of exploration, development, and removal of any minerals, oil, gas and other petroleum products therefrom, said board of county commissioners is hereby authorized to enter into written leases, under the terms of which any county owned lands or county owned mineral rights, or reserved mineral rights, are leased for the aforementioned purpose, with or without an option to purchase. Any such lease shall be upon terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and as in this chapter provided, and may be for such primary term as said board may determine and as long thereafter as minerals, including oil, and/or gas, may be produced therefrom. [1945 c 93 § 1; 1907 c 38 § 1; Rem. Supp. 1945 § 11312.]

Construction—1945 c 93: "Chapter 38, Laws of 1907, is amended by adding a new section to be designated as section 8, to read as follows:

Section 8. Nothing herein contained is intended to or shall be construed as affecting any existing rights granted under chapter 38, Laws of 1907." [1945 c 93 § 6.]

78.16.020 Order for lease—Terms—Option to purchase. When said commissioners, in their discretion, decide to lease said claims or properties as provided in RCW 78.16.010, they shall enter an order to that effect upon their records and shall fix the duration and terms and conditions of said lease, and in case an option to purchase is given shall fix the purchase price, which

shall not be less than the total amount of the taxes, interest and penalties due at the time the property was acquired by the county, and may provide that any royalties paid shall apply and be credited on the purchase price, and said lease or lease and option shall be signed and executed on behalf of said county by said commissioners, or a majority of them. [1907 c 38 § 2; RRS § 11313.]

78.16.030 Sale and conveyance. Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chairman of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [1907 c 38 § 3; RRS § 11314.]

78.16.040 Option to surrender lands. The lessee under any such petroleum lease shall have the option of surrendering any of the lands included in said lease at any time, and shall thereby be relieved of all liability with respect to such lands except the payment of accrued royalties as provided in said lease. Upon such surrender, the lessee shall have the right for a period of one hundred twenty days following the date of such surrender, to remove all improvements placed by him on the lands which have been surrendered. [1945 c 93 § 2; Rem. Supp. 1945 § 11314-1.]

78.16.050 Disposition of royalties and rentals. Any royalties or rentals received by the said county under any lease entered into under the provisions of this chapter, shall be divided among the various taxing districts entitled thereto, in the same proportion and manner as the purchase money for said lands would have been divided in the event the said properties had been sold. [1945 c 93 § 3; Rem. Supp. 1945 § 11314-2.]

78.16.060 Surface rights. Nothing in this chapter contained shall be construed as giving the county commissioners the right to lease the surface rights of tax acquired property, except that the lease of any property as in this chapter provided shall give the lessee the right to use such portions of the surface on said land as may be necessary or desirable to it in its business. [1945 c 93 § 4; Rem. Supp. 1945 § 11314-3.]

78.16.070 Damages to owner. In the event said lease shall be for reserved mineral rights on lands previously sold by said county with mineral rights reserved, as provided in chapter 19, Laws of 1943 [RCW 36.34.010], said lease shall contain a provision that no rights shall be exercised under said lease by the lessee, his heirs, executors, administrators, successors or assigns, until provision has been made by the lessee, his heirs, executors, administrators, successors or assigns to pay to the owner of the land upon which the rights reserved to the county are sought to be exercised [exercised], full payment for

all damages to said owner by reason of entering upon said land; said rights to be determined as provided for in said chapter 19, Laws of Washington, 1943 [RCW 36.34.010]: *Provided, however,* That in the event of litigation to determine such damage, the primary term of such lease shall be extended for a period equal to the time required for such litigation, but not to exceed three years. [1945 c 93 § 5; Rem. Supp. 1945 § 11314-4.]

Chapter 78.22

EXTINGUISHMENT OF UNUSED MINERAL RIGHTS

Sections	
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78.22.020	"Mineral interest" defined.
78.22.030	Acts constituting use of mineral interest.
78.22.040	Statement of claim—Contents—Fees—Filing.
78.22.050	Extinguishment of mineral interest—Procedure.
78.22.060	Presumption of extinguishment—Conditions—Statement of claim—Filing, recording, indexing.
78.22.070	Statement of claim—Notice and affidavit of publication—Auditor's duties.
78.22.080	Exemptions from claim of abandonment and extinguishment.
78.22.090	Waiver prohibited.

78.22.010 Extinguishment of unused mineral rights authorized. Any mineral interest, if unused for a period of twenty years, may be extinguished by the surface owner as set forth in RCW 78.22.050 and 78.22.060. [1984 c 252 § 1.]

78.22.020 "Mineral interest" defined. A mineral interest means the interest which is created by an instrument transferring, either by grant, assignment, or reservation, or otherwise an interest, of any kind, in any subsurface mineral. [1984 c 252 § 2.]

78.22.030 Acts constituting use of mineral interest. A mineral interest is used if:

- (1) Any minerals produced have been in connection with the mineral interest;
- (2) Operations for injection, withdrawal, storage or disposal of water, gas, or other fluid substances have been conducted in connection with the mineral interest;
- (3) Rents or royalties have been paid for the purpose of delaying or enjoying the use or exercise of the mineral interest;
- (4) The use or the exercise of the mineral interest has been carried out on any tract with which the mineral interest may be unitized or pooled for production purposes;
- (5) In the case of coal or other solid minerals, minerals have been produced from a common vein or seam;
- (6) Taxes have been paid on such mineral interest;
- (7) Any use pursuant to or authorized by the instrument creating such mineral interest has been taken;
- (8) A sale, lease, mortgage, or other transfer of the mineral interest has been recorded in the county auditor's office in the county in which the land affected by the mineral interest is located prior to the end of the twenty-year period set forth in RCW 78.22.010 or

within two years after June 7, 1984, whichever is later; or

(9) A statement of claim has been filed by the owner of the mineral interest in the manner set forth in RCW 78.22.040 or 78.22.060. [1984 c 252 § 3.]

78.22.040 Statement of claim—Contents—Fees—Filing. The statement of claim referred to in RCW 78.22.030(9) shall be filed by the current owner of the mineral interest prior to the end of the twenty-year period set forth in RCW 78.22.010 or within two years after June 7, 1984, whichever is later. The statement of claim shall contain the name and address of the current owner of such interest, and the name of the original holder of the mineral interest substantially as that name is shown on the instrument that originally created the mineral interest and shall be accompanied by payment of the fees provided in RCW 36.18.010.

The statement of claim shall be filed in the county auditor's office in the county in which such land affected by the mineral interest is located. [1984 c 252 § 4.]

78.22.050 Extinguishment of mineral interest—Procedure. (1) After the later of the expiration of the twenty-year period set forth in RCW 78.22.010 or two years after June 7, 1984, the surface owner may extinguish the mineral interest held by another person and acquire ownership of that interest by providing sixty days notice of intention to file a claim of abandonment and extinguishment of the mineral interest upon the current mineral interest owner. Notice shall be served by personal service or by mailing the notice by registered mail to the last known address of the current mineral interest owner. The county treasurer shall supply the name and address of the current mineral interest owner as they appear on the county property tax records to the surface owner without charge. If the current mineral interest owner is unknown to the county treasurer, and the current mineral interest owner cannot be determined after due diligence, the surface owner may serve the notice upon the current mineral interest owner by publishing the notice at least once each week for three consecutive weeks in a newspaper of general circulation published in the county in which the property interest is located, and if there is no newspaper of general circulation in the county, then in a newspaper of general circulation published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper of general circulation published at the capital of the state.

(2) The notice of intention to file a claim of abandonment and extinguishment shall contain:

(a) The name and address, if known, of the holder of the mineral interest, as shown of record;

(b) A reference to the instrument originally creating the mineral interest, including where it is recorded;

(c) A description of the lands affected by the mineral interest;

(d) The name and address of the person giving notice;

(e) The date of the first publication of the notice if notice is by publication; and

(f) A statement that a claim of abandonment and extinguishment of the mineral interest will be filed upon the expiration of a period of sixty days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner, unless the current mineral interest owner files a statement of claim of mineral interest in the form prescribed in RCW 78.22.040.

(3) A copy of the notice of intention to file a claim of abandonment and extinguishment and an affidavit of publication shall be submitted to the county auditor within fifteen days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner.

(4) The affidavit of publication shall contain either:

(a) A statement that a copy of the notice has been personally served upon or mailed to the owner of the current mineral interest and the address to which it was mailed; or

(b) If a copy of the notice was not mailed, a detailed description, including dates, of the efforts made to determine with due diligence the address of the current owner of the mineral interest. [1984 c 252 § 5.]

78.22.060 Presumption of extinguishment—Conditions—Statement of claim—Filing, recording, indexing. Upon payment of fees provided in RCW 36.18.010, and if the surface owner files the claim of abandonment and extinguishment, together with a copy of the notice and the affidavit of publication, as required in RCW 78.22.050, in the county auditor's office for the county where such interest is located then the mineral interest shall be conclusively presumed to be extinguished.

If a statement of claim of mineral interest is filed by the current mineral interest owner within the sixty-day period provided in RCW 78.22.050, together with payment of fees provided in RCW 36.18.010, the county auditor shall record, index, and make special notation in the index of the filing. [1984 c 252 § 6.]

78.22.070 Statement of claim—Notice and affidavit of publication—Auditor's duties. Upon receipt, the county auditor shall record a statement of claim or a notice and affidavit of publication in the dormant mineral interest index. When possible, the auditor shall also indicate by marginal notation on the instrument originally creating the mineral interest the recording of the statement of claim or notice and affidavit of publication. The county auditor shall record a statement of claim by cross-referencing in the dormant mineral interest index the name of the current owner of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim. [1984 c 252 § 7.]

78.22.080 Exemptions from claim of abandonment and extinguishment. Mineral interests retained or owned by any public entity or mineral interests resulting from land exchanges between public and private owners shall

not be subject to a claim of abandonment and extinguishment. [1984 c 252 § 8.]

78.22.090 Waiver prohibited. The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period under RCW 78.22-.010. [1984 c 252 § 9.]

Chapter 78.40 COAL MINING CODE

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- Reviser's note:** (1) For earlier acts on this subject see: Code 1881 §§ 2628–2638, 1883 pp 25–28, 1885–6 pp 129–133, 1887–8 c 21, 1891 c 81, 1897 c 45, 1907 cc 77 and 105, 1909 cc 55, 57, 177 and 220, 1911 cc 63, 65 and 123, 1925 ex.s. c 15.
- (2) Statutory authority for the position of chief state mine inspector and the state mining board, referred to throughout this chapter, was repealed by 1973 1st ex. sess. c 52 § 11, and section 2 of that act merged the division of mining safety of the department of labor and industries into the division of industrial safety and health, which replaced the former division of safety [RCW 43.22.010]. Inspection of coal mines is now handled by the supervisor of the division of industrial safety and health; cf. RCW 43.22.200 and 43.22.210.
- ARTICLE I DEFINITION OF TERMS**
- 78.40.010 Definitions.** For the purpose of this chapter the terms and definitions contained therein shall be as follows:
- Mine:** The term "mine" shall mean all the excavations penetrating coal or other strata used in the opening, developing or operation of workings for the purpose of mining coal, operated by one operator, and all machinery, tramways, sidings, either above or below ground, in or adjacent to and belonging to said operation.

Shaft: The term "shaft" shall mean any vertical excavation in the earth or strata used as a means of ingress or egress, for hoisting or lowering of material, for ventilation or drainage, or any other purpose incidental to the operation of a mine.

Slope: The term "slope" shall mean any excavation in the earth or strata driven at an angle to the plane of the horizon, used as a means of ingress or egress, for hoisting or lowering of material, for ventilation or drainage, or other purpose incidental to the operation of a mine.

Airway: The term "airway" shall mean any underground passage the principal purpose of which is to carry air.

Working face: The term "working face" shall mean any portion of a mine from which coal or rock is being cut, removed, sheared, broken or loosened.

Opening: The term "opening" includes shafts, slopes, inclines, tunnels, levels, or any other means of access to a mine.

Map: The term "map" includes plans and projections, section tracing and print of an original plan, or section of a mine or portion thereof.

Plane: The term "plane" shall mean an inclined roadway, other than slopes, used for the transportation of coal, men or material.

Tunnel: The term "tunnel" shall mean any excavation in the earth or strata driven approximately horizontally, used in ingress and egress of men and material, or for ventilation, drainage or haulage.

Level—Gangway—Entry: The term "level", "gangway", or "entry" shall mean an excavation driven parallel, or nearly so, to the strike of the seam, and used for ventilation, traveling, haulage or drainage.

Sump: The term "sump" shall mean a catch-basin into which the drainage from a mine flows, and from which it is pumped directly or indirectly to the surface.

Crosscut—Breakthrough: The term "crosscut" or "breakthrough" shall mean an excavation driven to connect two parallel working places.

Inspector: The term "inspector" shall mean the person commissioned by the governor to inspect the coal mines, as hereinafter provided for in this chapter.

Deputy inspector: The term "deputy inspector" shall mean a person appointed by the inspector, to be a deputy mine inspector, as hereinafter provided for in this chapter.

Operator: The term "operator" shall mean any firm, company, corporation, or individual working any mine or any part thereof.

Manager or general manager: The term "manager" or "general manager" shall mean any person who shall have, on behalf of the operator, general supervision of the operation of any mine or group of mines.

Superintendent: The term "superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision, under the manager or operator, of any mine or group of mines.

Mine foreman: The term "mine foreman" shall mean a person whom the operator, manager or superintendent, shall place in charge of the workings of a mine, and of the persons employed in or about the same.

Assistant mine foreman: The term "assistant mine foreman" shall mean a person appointed by the management to assist in directing the operation of a mine or the persons employed in or about the same.

Fire boss: The term "fire boss" shall mean a person appointed by the management to inspect all the working places of a mine in his district.

Shot firer—Shot lighter: The term "shot firer" or "shot lighter" shall mean a person appointed by the mine foreman to inspect and fire shots used for the breaking of coal or rock, and to otherwise supervise the use of explosives in a mine.

Miner: The term "miner" shall mean a person employed underground to mine, cut, shear, break or loosen coal or rock, either by hand, machinery or powder, load same when required, and do necessary timbering.

Company man: The term "company man" shall include any man or men employed in or about a mine and not mentioned in the foregoing definitions of terms.

Certificated man: The term "certificated man" shall mean any person holding a certificate of competency as provided for in this chapter.

Approved safety lamps: The term "approved safety lamps" shall mean any safety or electric lamp approved by the federal bureau of mines.

Permissible explosives: The term "permissible explosives" shall mean any explosives declared by the federal bureau of mines to be permissible for use in a mine, when said explosive is used as provided for by the federal bureau of mines.

Check weighman: The term "check weighman" shall mean an employee selected and paid by the miners, to inspect the weighing of the miners' coal that is being mined by the ton.

Weighman: The term "weighman" shall mean a person employed by the operator to weigh coal.

Terms not previously defined: All terms used in this chapter not hereinabove defined shall have their commonly accepted meanings as used in coal mines of this state. [1917 c 36 § 1; RRS § 8636. Formerly RCW 78.32.010.]

ARTICLE II INSPECTION DEPARTMENT

78.40.060 Coal mining code—Inspection department. See RCW 43.22.200, 43.22.210.

ARTICLE V VENTILATION

78.40.160 Minimum quantity of air required. The operator, or superintendent, of every coal mine shall provide and maintain ample mechanical means of ventilation to furnish a constant and adequate supply of pure air for employees in the mine. The minimum quantity of air shall be one hundred cubic feet per minute for each person employed in the mine, and five hundred cubic feet per minute for each horse or mule, and as much more as may be necessary to keep the mine free from dangerous and explosive gases. [1947 c 166 § 2; 1917 c 36 § 27; Rem. Supp. 1947 § 8662. Prior: 1897 c 45 § 4,

part; 1891 c 81 § 9, part; 1887 c 21 § 4, part; 1883 p 28 § 18, part; Code 1881 § 2635, part. Formerly RCW 78.36.400.]

78.40.163 Separate air currents for each division. Every mine shall be divided into districts or splits of not more than seventy men in each district or split (unless in the judgment of the inspector it is impracticable to comply with this requirement, in which case a larger number, not to exceed ninety persons, may be permitted to work therein). Each district or split shall be supplied with a separate current of fresh air. The return air from each district or split, when from seventy to ninety men are employed, shall be conducted direct or through an overcast or undercast to the main return airway. [1917 c 36 § 28; RRS § 8663. Prior: 1897 c 45 § 4, part. Formerly RCW 78.36.410.]

78.40.166 Ventilation to be sufficient for safety and health. The ventilation shall be conducted to all working places in the mine in sufficient quantities to dilute, render harmless and carry off the smoke, noxious and other dangerous gases generated therein, to such an extent that all working places, traveling roads, and such other places as may be necessary for the general safety of the mine, shall be in a safe and healthful condition. [1917 c 36 § 29; RRS § 8664. Prior: 1897 c 45 § 4, part; 1891 c 81 § 9, part; 1887 c 21 § 4, part; 1883 p 28 § 18, part; Code 1881 § 2635, part. Formerly RCW 78.36.420.]

78.40.169 Measurement of air. The quantity of air passing a given point shall be ascertained by an anemometer, the measurements to be taken by the mine foreman, or his assistant, at least once each week at or near the main inlet and outlet of the mine, and the inlet and outlet for each district or split, and also in the last crosscut or breakthrough nearest to face of entry, gangway or air course beyond the last breast, chute or room, turned, and in the top crosscut or breakthrough between the two inside working breasts, chutes or rooms, also in the top crosscut or breakthrough between the two outside working breasts, chutes or rooms. [1917 c 36 § 30; RRS § 8665. Prior: 1909 c 57 § 1, part; 1897 c 45 § 5, part. Formerly RCW 78.36.430.]

78.40.172 Measurement of air—Time for taking. Weekly measurements shall also be taken of air traveling through pillars that are being drawn. Said measurements shall be taken on the days when the men are at work. [1917 c 36 § 31; RRS § 8666. Formerly RCW 78.36.440, part.]

78.40.175 Measurement of air—Record. A record of all air measurements shall be entered in a book provided for that purpose and kept at the mine. [1917 c 36 § 32; RRS § 8667. Prior: 1909 c 57 § 1, part; 1897 c 45 § 4, part. Formerly RCW 78.36.440, part.]

78.40.178 Fire bosses in gaseous mines. In every coal mine in which inflammable gas has been found within the preceding twelve months, or spontaneous combustion

occurs, a fire boss, or fire bosses, shall be appointed, who shall, within three hours before the time for commencing work in any part of the mine, inspect with an approved safety lamp all working places, and shall make a true report of the condition thereof. All new coal mines shall comply with the sections of this chapter pertaining to the regulation of gaseous mines. [1947 c 166 § 3; 1917 c 36 § 33; Rem. Supp. 1947 § 8668. Formerly RCW 78.32.580.]

78.40.181 Fire boss to report on safety of mine. Where fire bosses are employed workmen shall not go to work in the mine until the same and the traveling way leading thereto are reported safe by the fire boss or fire bosses so inspecting. Every such report shall be recorded as provided for under the duties of fire bosses, RCW 78.40.438. [1917 c 36 § 34; RRS § 8669. Formerly RCW 78.32.620.]

78.40.184 Fan operation at nongaseous mines. At nongaseous mines the fan may be stopped during a suspension of work, temporary or otherwise. However, it must be started two hours before employees are admitted to the mine. [1917 c 36 § 35; RRS § 8670. Formerly RCW 78.36.450.]

78.40.187 Continuous operation of fans at gaseous mines. Every main fan at gaseous mines shall be kept in operation continuously, day and night, unless operations are definitely suspended for a period of one week or more: *Provided*, That should it at any time become necessary to stop any fan at any mine, gaseous or nongaseous, on account of accident to part of the machinery connected therewith, or by reason of any other unavoidable cause, it shall be the duty of the mine foreman, or the assistant mine foreman, in charge, after having first provided for the safety of the persons employed in the mine, to order said fan stopped for necessary repairs. [1919 c 201 § 2; 1917 c 36 § 36; RRS § 8671. Prior: 1897 c 45 § 9. Formerly RCW 78.36.460.]

78.40.190 Ventilating pressure to be registered—Types and location of fans. Every main ventilating fan shall be provided with a recording instrument by which the ventilating pressure of the fan shall be registered, and the registration of each day, with the date thereof, shall be kept in the office of the mine for future reference for one year, the same to be produced upon request of the inspector.

No fan, unless driven by electricity or compressed air, shall be placed in any mine. In gaseous mines, if the fan is electrically driven, the motor and starter shall be located in pure intake air, and shall not be less than twenty-five feet outby the last open crosscut. [1943 c 211 § 2; 1917 c 36 § 37; Rem. Supp. 1943 § 8672. Formerly RCW 78.36.470, part.]

78.40.193 Furnace, unlawful ventilation. It shall be unlawful to use a furnace for ventilation in any coal mine in the state. [1917 c 36 § 38; RRS § 8673. Prior:

1891 c 81 § 9, part; 1887 c 21 § 4, part. Formerly RCW 78.36.470, part.]

78.40.196 Air bridges, undercasts, overcasts—Construction. In every mine all permanent air bridges, undercasts or overcasts, shall be substantially built of ample strength. If built of wood they must be covered with fireproof material on all exposed sides; or they must be driven through the solid strata. [1917 c 36 § 39; RRS § 8674. Formerly RCW 78.36.500.]

78.40.199 Ventilating doors to close automatically. All doors used in assisting or in any way affecting the ventilation shall be so hung that they will close automatically. [1917 c 36 § 40; RRS § 8675. Formerly RCW 78.36.480, part.]

78.40.202 Doors to be hung in pairs—Extra door. All permanent doors on main haulage roads affecting main air currents shall be hung in pairs and so placed that when one door is open, another which has the same effect upon the same air current, shall be and remain closed and thus prevent any temporary stoppage of the air current. An extra door shall be so placed and kept standing open as to be out of reach of accident, and arranged so that it can be closed should one or both of the other doors be out of order. [1917 c 36 § 41; RRS § 8676. Prior: 1897 c 45 § 4, part; 1891 c 81 § 17. Formerly RCW 78.36.480, part.]

78.40.205 Self-acting doors or attendant. The inspector may require either self-acting doors of an approved type, or an attendant at permanent doors that control the air current on any main haulage roads through which cars are hauled, for the purpose of opening and closing it for the employees and cars to pass in and out from the workings. A hole for shelter shall be provided at each door, to protect the attendant from danger from cars while performing his duty. Persons employed for this purpose shall remain at the doors at all times during working hours: *Provided*, That the same attendant may attend two doors if his absence from the first door does not endanger the safety of the employees. [1917 c 36 § 42; RRS § 8677. Formerly RCW 78.36.490.]

78.40.208 Stoppings between airways—Construction. In all mines, all new permanent stoppings in crosscuts or breakthroughs between the main intake and return airways shall be substantially built of masonry, concrete, or blocks of timber. Renewals of old stoppings shall be built as above. When timber is used the same must be faced with concrete or other incombustible material. [1917 c 36 § 43; RRS § 8678. Formerly RCW 78.36.510.]

78.40.211 Stoppings between airways—Airtight stoppings. Stoppings on levels between intake and return airways shall be substantially built and made as near airtight as possible. On levels driven more than two

thousand feet, stoppings shall be built of masonry, concrete or blocks of timber. [1917 c 36 § 44; RRS § 8679. Formerly RCW 78.36.520.]

78.40.214 Wood stoppings to get air to working places. Stoppings shall be built in crosscuts or breakthroughs, between breasts, chutes or rooms, or other working places, to conduct the ventilation to the working places. However, such stoppings may be built of wood. [1917 c 36 § 45; RRS § 8680. Formerly RCW 78.36.530, part.]

78.40.217 Outlets, number required—Exceptions. It shall be unlawful for the owner, operator or superintendent of any mine, or the agent of such owner, operator or superintendent, to employ any person or persons in such mine, or permit any person or persons to be in such mine for the purpose of working therein, unless there are provided and maintained in connection with and leading from such mine, in addition to the hoisting shaft, slope or other place of delivery not less than two openings or outlets to the surface, or one outlet to the surface and one underground passage leading to a contiguous mine; said openings or outlets to be separated from each other and from such hoisting shaft, slope or other place of delivery, by a stratum of not less than fifty feet in thickness, at and through which openings or outlets safe and ready means of ingress and egress are at all times available by not less than three routes, for any person or persons employed in said mine; and in connection with and leading from each seam or stratum of coal being worked in said mine, and from every lift thereof, not less than two openings or outlets leading directly or indirectly to the surface, and separated by a stratum of not less than fifty feet in thickness; at and through which two openings safe and ready means of ingress and egress are at all times available by not less than two routes for any person or persons employed in said stratum or seam of coal or lift thereof. This section shall not apply to a mine while being worked for the purpose of making communication between said outlets, or to open a seam or stratum of coal, or new lift thereof, so long as not more than twenty persons are employed at any time in such part of a mine, or new lift of a mine; neither shall it apply to any mine or part of a mine in which any outlet has been rendered unavailable by reason of the final robbing of pillars, previous to abandonment, so long as not more than twenty persons are employed in such mine or any part of such mine at one time.

This section shall apply only to mines or parts of mines which shall be developed or in which development shall be started after this chapter shall go into effect, but it shall not be construed to permit any openings or outlets now in use for the safety of men to be abandoned unless other such openings are substituted therefor. [1919 c 201 § 3; 1917 c 36 § 46; RRS § 8681. Prior: 1887 c 21 § 3, part; 1883 p 27 § 17, part; Code 1881 § 2634, part. Formerly RCW 78.34.710.]

78.40.220 Distances allowed from outlets or passages for removal of coal. It shall be unlawful for the owner,

operator or superintendent of any mine to loosen or remove, or cause or permit to be loosened or removed from its original position, any coal within a distance of two hundred and fifty feet on either side of any hoisting slope, or within a distance of fifty feet on either side of any permanent airway, or escapeway, or within twenty-five feet of any level or gangway, or any parallel airway to any level or gangway, except for the purpose of driving air and escapeways, crosscuts and such other passages as may be necessary for the proper operation of the mine: *Provided*, That if the inspector shall deem it safe to permit coal to be loosened or removed within a distance nearer than two hundred and fifty feet from any hoisting slope he may grant permission to the operator to remove such coal within a distance of not less than one hundred and fifty feet of such hoisting slope, by issuing a written permit therefor. This section shall not be construed to prevent the drawing of pillars previous to the final abandonment of the mine. [1919 c 201 § 4; 1917 c 36 § 47; RRS § 8682. Formerly RCW 78.34.730.]

78.40.223 Crosscuts—Requirements. Crosscuts between room, breasts and chutes shall be made not to exceed sixty feet apart.

Crosscuts between gangways, levels, airways and counters, or main slopes and main air courses, shall not exceed sixty feet, unless they may be properly ventilated by sufficient brattices. [1917 c 36 § 48; RRS § 8683. Formerly RCW 78.34.820.]

78.40.226 Conducting air to crosscuts. The required air current shall be conducted to the crosscut nearest the face of each entry, gangway, breast or chute. [1917 c 36 § 49; RRS § 8684. Formerly RCW 78.36.530, part.]

78.40.229 Danger signs. Danger signs in all mines shall be uniform, and of a design submitted by the mine inspector. All danger signs shall be kept in good condition, and no defective sign shall be allowed to remain in any mine. [1917 c 36 § 50; RRS § 8685. Formerly RCW 78.34.780.]

ARTICLE VI MAPS AND PLANS

78.40.235 Survey and map of mine. The operator of every coal mine in this state shall make, or cause to be made, an accurate transit survey and an accurate map or plan of such mine, drawn to the scale of one hundred feet to the inch, on which shall appear the name of the state, county and township in which the mine is located; the designation of the mine, the name of the company or owner; the certificate of the mining engineer or surveyor as to the accuracy and date of the survey; the direction of the true meridian, and the scale to which the drawing is made. [1917 c 36 § 51; RRS § 8686. Prior: 1909 c 117 § 1(a); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.800.]

78.40.238 Maps to show surface objects. Every such map or plan shall correctly show the surface boundary

lines of the coal rights pertaining to each mine, and all section or quarter section lines or corners within the same; the lines of town lots and streets, the tracks and sidetracks of all railroads and the location of all wagon roads, rivers, streams, lakes or ponds, with depth shown, all buildings, landmarks and principal objects on the surface. [1917 c 36 § 52; RRS § 8687. Prior: 1909 c 117 § 1(b); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.810.]

78.40.241 Maps to show underground conditions. For the underground workings said maps shall show all shafts, slopes, tunnels or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms and crosscuts; the location of pumps, hauling engines, engine planes, abandoned works, firewalls and standing water; and the boundary line of any surface outcrop of the seam. Sea level datum and pitch of seams shall be placed on the maps at top and bottom of slopes and shafts, at ends of all gangways and at top of escapeways. [1917 c 36 § 53; RRS § 8688. Prior: 1909 c 117 § 1(c); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.820.]

78.40.244 Separate map for each seam. A separate map, drawn to the same scale in all cases, shall be made of each and every seam worked in any mine, and the maps of all such seams shall show all shafts, inclined planes or other passageways connecting the same, and shall show the sea level datum and pitch of seams, as provided in RCW 78.40.241. [1917 c 36 § 54; RRS § 8689. Prior: 1909 c 117 § 1(d). Formerly RCW 78.38.830.]

78.40.247 Separate surface maps. A separate map shall also be made of the surface whenever the surface buildings, lines or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such cases the surface map shall be drawn upon transparent cloth or paper, so that it can be laid on the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine. [1917 c 36 § 55; RRS § 8690. Prior: 1909 c 117 § 1(e). Formerly RCW 78.38.840.]

78.40.250 Maps, where filed. The original or true copies of all such maps shall be kept in the office of the mine, and prints thereof shall also be furnished to the mine inspector, and to the division of mines and geology of the department of conservation and development. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the inspector during the term of his office, and be delivered by him to his successor in office; they shall be kept at the office of the inspector, and be open only to the inspector or his deputy for his examination, and he shall not permit any copies of the same to be made. The maps delivered to the division of mines and geology shall be the property of the state and be kept in the custody of the

supervisor of the division as a permanent record in his files, and shall be held as confidential information unless released by written permission of the owner or operator. [1947 c 87 § 1; 1917 c 36 § 56; Rem. Supp. 1947 § 8691. Prior: 1909 c 117 § 1(g); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.850.]

Department of conservation and development: See note following title digest.

78.40.253 Annual extension of survey—Maps to be changed. An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1st of every year, and the results of said survey, with the date thereof, shall be promptly and accurately entered upon the original maps and all copies of same so as to show all changes in plan or new work in the mine and all extensions to the old workings which have been made since the last preceding survey. The said changes and extensions shall be entered upon the copies of the maps in the hands of said inspector, or a new copy furnished and the old copy returned to the operator. [1917 c 36 § 57; RRS § 8692. Prior: 1909 c 117 § 1(h); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.860.]

78.40.256 Final survey and map. When any coal mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a final survey of all parts of such mine, and the results of the same shall be duly extended on all maps of the mine and a copy of such final survey shall be filed with the mine inspector, so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines of the surface. [1917 c 36 § 58; RRS § 8693. Prior: 1909 c 117 § 1(i); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.870.]

78.40.259 Failure to furnish maps—Penalty. Whenever an operator of any mine shall neglect or refuse or for any cause not satisfactory to the mine inspector, fail for the period of three months to furnish said inspector the map or plan of such mine, or a copy thereof, or the extensions thereto, as provided in this article, such operator shall be deemed guilty of a misdemeanor, and the inspector is hereby authorized to make or cause to be made an accurate plan or map of such mine at the cost of the operator thereof, and the cost of the same may be recovered from the operator in an action at law brought in the name of the inspector, for his use. [1917 c 36 § 59; RRS § 8694. Prior: 1909 c 117 § 2; 1891 c 81 § 2. Formerly RCW 78.38.880.]

78.40.262 Resurveys and maps—Expense. The mine inspector may order a survey to be made of the workings of any mine, in addition to the regular annual survey, the results to be extended on the maps of the same and copies thereof, whenever the safety of the

workmen, unlawful injury to the surface, unlawful encroachment on adjoining property, or the safety of an adjoining mine requires it.

If the inspector shall believe any map required by this chapter is materially inaccurate or imperfect, he is authorized to make or cause to be made a correct survey and map at the expense of the operating company, the cost recoverable as for debt: *Provided*, If such test survey shows the operator's map to be practically correct, the state shall be liable for the expense incurred, payable in such manner as other state accounts incurred by the mine inspector. [1917 c 36 § 60; RRS § 8695. Prior: 1909 c 117 §§ 1(j) and 2; 1891 c 81 § 2. Formerly RCW 78.38.890.]

ARTICLE VII HOISTS AND HOISTING

78.40.270 Signaling apparatus required. The owner, operator or agent of every coal mine operated by shaft or slope, shall provide efficient means of signaling between the top and bottom thereof and each intermediate working level, by an electric bell or other equally satisfactory signaling device, and also a uniform code of signals for use therewith.

The operator or the superintendent shall provide, and hereafter maintain in good condition from the top to the bottom of every shaft or slope, and at each alternate intermediate working level from or to which persons or materials are lowered or hoisted, a telephone or metal tube of proper diameter, suitably adjusted to the free passage of sound, through which conversation may be held and understood between persons at the top and bottom of said shaft or slope. [1917 c 36 § 61; RRS § 8696. Prior: 1907 c 105 § 2, part; 1891 c 81 § 16, part; 1887 c 21 § 6, part; 1885 p 132 § 24, part. Formerly RCW 78.36.800.]

78.40.273 Hoisting apparatus—Requirements. For the purpose of hoisting or lowering men in any shaft or slope the owner, operator or agent thereof shall provide:

(1) A type of hoisting apparatus of sufficient strength to hold twice the maximum weight of the cage or cars loaded with men at any point on the shaft or slope. Each hoisting apparatus to be equipped with a brake or brakes on each drum of sufficient power to fully control the speed of the cage or cages or cars in such shaft or slope.

(2) An efficient indicator that will show at all times the true position of the cage or cages or cars attached to each hoist.

(3) An efficient device for the prevention of overwinding shall be attached to every hoisting apparatus hereafter put in service for hoisting or lowering persons in a shaft.

(4) A cage with a floor free from all obstructions must be provided for all shafts. Such cage shall be solidly constructed of heavy timber or iron beams for the frame, sufficient to withstand severe shocks under strains, and shall be covered with a substantially supported bonnet of boiler iron to protect persons riding in the cage from anything falling down the shaft. Each cage must be equipped with chains, bars or gates at each

end, which must be always in place when men are hoisted or lowered. Each cage must also be equipped with efficient safety catches to prevent the cage from falling down the shaft in the event of the rope breaking. All rope links or chains attached to cars or cages must be of ample strength with a factor of safety of not less than five to one on the maximum load.

(5) On all regular man trips being hoisted on slopes of twenty degrees or more, each car shall be attached to the car ahead by two or more separate connections, each one of which must be of ample strength to hold any load placed upon it by the breaking of the other. And the first car shall be secured to the socket by an extra cable or chain securely attached to the car: *Provided*, That any other approved safety device may be used in lieu of those hereinabove in this paragraph (5) mentioned. On all slopes of less than twenty degrees a safety rope shall extend from the main rope to the last car, or other approved safety device that will answer the same purpose.

(6) At all shafts, when hoisting men or material, there must be provided a competent person at the top and bottom to have control of the admission of cars, material or persons, to the cage operating in such shaft.

(7) Safety gates must be provided at the top and at any intermediate landing of a shaft, or of a slope inclined over sixty degrees from the horizontal, such gates to be so constructed that when closed access to the shaft or slope will be entirely cut off; and such gates to be kept closed at all times when the rope rider or other person in charge of such landing is not present.

(8) At distances not to exceed sixty feet on inclined planes or slopes where men are employed during operations suitable holes for refuge must be provided, these to be cut into the strata not less than two and one-half feet deep and four feet wide and five feet high and level with the road. Such holes to be located at points easy of access and to be kept whitewashed. [1917 c 36 § 62; RRS § 8697. Prior: 1907 c 105 § 2, part; 1891 c 81 § 16, part; 1887 c 21 § 6, part. Formerly RCW 78.36.820.]

Safety cage in mining shaft—Regulations: RCW 78.12.061, 78.12.062.

78.40.276 Strength and inspection of safety devices. All ropes, chains, safety catches, etc., as enumerated above, must be of ample strength to support a strain equivalent to five times the maximum load, and must be kept in safe condition; and, furthermore, they must be inspected at least once in twenty-four hours by a competent person appointed by the superintendent for that purpose, and a record of such examinations, reporting all defects that may have been found, must be written in ink in a book kept for that purpose at the mine office. Any defects must be corrected immediately and no persons shall be lowered into or hoisted from the mine by defective apparatus; and, furthermore, all coupling links, pins and chains used on main haulage in hoisting or lowering men on a slope shall be annealed once in every three months. Pins and couplings on all other cars must be annealed once a year. [1917 c 36 § 63; RRS § 8698. Prior: 1909 c 117 § 3, part; 1891 c 81 § 4, part. Formerly RCW 78.36.830.]

78.40.279 Testing safety catches. The following tests of safety catches on cages shall be made once every six months: The cage shall be secured by passing a heavy hemp rope through the bridle chain ring or link and fastening both ends of the ropes to guides or to diagonally opposite posts of head frame, drawing the rope taut. A blocking to be passed below the cage to support same before hoisting rope is taut. The hoisting engineer shall then slack away until the cage is suspended on the hemp rope with at least four feet of the slack hoisting rope on top of it. Everything being in readiness the hemp rope shall be suddenly cut. If the safety catches stop the cage before it rests upon the blocking, the apparatus shall be considered efficient. [1917 c 36 § 64; RRS § 8699. Formerly RCW 78.36.840.]

78.40.281 Allowable proximity of structures to ventilating fan or main airway. No building or structure shall be erected within seventy-five feet of any main ventilating fan or main entrance to or exit from main airway slope or drift, except the tippie building and trestle thereto, unless same shall be built of fireproof material, and no fires shall be allowed in or about said tippie or trestle, except it be in a fire box of a boiler: *Provided*, That this section shall not apply to any shaft or slope heretofore sunk, or to any building heretofore erected, or to prospecting or development work otherwise regulated by this chapter. [1917 c 36 § 65; RRS § 8700. Formerly RCW 78.36.540.]

78.40.284 Men and materials not to be hoisted together. No person, except mine officials, cagers or repair men, shall be hoisted or lowered in a cage with a loaded or empty car or with material of any kind on either the same or opposite cage. [1917 c 36 § 66; RRS § 8701. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.860.]

Riding cages and cars in shafts and slopes prohibited: RCW 78.40.636.

78.40.287 Human capacity of cages—Attendant. Not more than six persons per ton of hoisting capacity shall be hoisted or lowered in any cage or car in any shaft, slope or incline at any one time: *And, provided*, That not more than one person for each three square feet of floor surface shall be hoisted or lowered in any cage at any one time: *And provided further*, That in shafts, slopes or inclines, at all hoists not equipped with overwinding device, a competent attendant, in addition to the hoistman, shall be stationed in close proximity to engine controls at such time as men are being hoisted or lowered on regular man trips. [1943 c 211 § 3; 1917 c 36 § 67; Rem. Supp. 1943 § 8702. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.870.]

Hoisting apparatus—Requirements: RCW 78.40.273.

78.40.290 Restrictions on hoisting speed. No person or persons other than trip riders or mine officials shall be hoisted or lowered at a speed exceeding six hundred feet per minute. [1917 c 36 § 68; RRS § 8703. Formerly RCW 78.36.880, part.]

78.40.293 Hoistmen—Qualifications. An engineer placed in charge of the hoisting engine, where men are being hoisted or lowered, must be a sober, competent person not less than eighteen years of age, and in good physical and mental condition for such work; and no person shall be permitted to handle or operate any such hoist until his health has been certified by a reputable physician and his competency determined and certified by the state mining board upon such examination as it may prescribe. [1971 ex.s. c 292 § 68; 1939 c 51 § 1; 1917 c 36 § 69; RRS § 8704. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 4, part. Formerly RCW 78.36.890.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

78.40.296 Riding loaded cars—Traveling ways for men. No person, except those whose regular duties require it, shall be allowed to ride in or on the outside of any loaded car or skip in any slope. In any mine opened after this chapter goes into effect, separate traveling ways shall be provided and no employee, except those whose regular duty compels them to use a slope or incline, will be allowed to walk up or down the same while they are in operation. [1917 c 36 § 70; RRS § 8705. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 24, part. Formerly RCW 78.34.120, part.]

Foot travel on slopes, roads, prohibited: RCW 78.40.633.

Riding cages and cars in shafts and slopes prohibited: RCW 78.40.636.

Riding full cars prohibited—Exception: RCW 78.40.639.

ARTICLE VIII DUTIES OF OPERATORS

78.40.300 Liability of foremen as agents of operators. For the purpose of this chapter the superintendent or mine foreman in direct charge of the operation of any mine or mines, shall be considered as the agent of the owner or operator, and shall be held jointly responsible with the owner or operator for any failure to comply with the sections of this chapter governing owners, operators or agents. [1917 c 36 § 71; RRS § 8706. Formerly RCW 78.38.510.]

78.40.303 Report of deaths and injuries. Every operator of a coal mine shall make, or cause to be made, for the information of the inspection department, upon uniform blanks furnished by said department, a record of all deaths and all injuries sustained by any employees in the pursuance of their regular occupations. These records shall be forwarded to the inspection department within one month from the time the accident occurs. [1917 c 36 § 72; RRS § 8707. Prior: 1891 c 81 § 15, part; 1887 c 21 § 7, part. Formerly RCW 78.38.520.]

78.40.306 Matters to be reported to inspector. In addition to the foregoing, immediate notice must be conveyed to the state inspection department by the management of the operating company interested: (1) Whenever a new mine is opened; (2) whenever it is intended to abandon any mine or to reopen an abandoned

mine; (3) when the workings of any mine are approaching any abandoned mine believed to contain any accumulation of water or gas; (4) upon the accidental closing or abandonment of any regularly established passageway to an escapement outlet; (5) upon the occurrence of any serious fire within the same; (6) when any unusual amount of or accumulation of gas is encountered; (7) whenever any person is seriously burned by the ignition of explosive gas. [1917 c 36 § 73; RRS § 8708. Formerly RCW 78.38.540.]

78.40.309 Superintendent acting as foreman. It shall be unlawful for the operator to have the superintendent to act as mine foreman, unless the superintendent holds a certificate of competency as a mine foreman issued by the state board of examiners. [1917 c 36 § 74; RRS § 8709. Formerly RCW 78.32.430.]

78.40.312 Mine foreman to have certificate—Temporary mine foreman. It shall be unlawful for the operator of any mine to have in his service as mine foreman any person who does not hold a certificate of competency as mine foreman issued by the state board of examiners. Anyone holding a first class certificate may serve as a mine foreman: *Provided*, That whenever an exigency arises by which it is impossible for any operator to secure the immediate services of a certificated mine foreman, he may employ any trustworthy and experienced man to act as temporary mine foreman for a period not to exceed thirty days, and in the event that no person possession [possessing] a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [1917 c 36 § 75; RRS § 8710. Formerly RCW 78.32.450, part.]

78.40.315 Assistant mine foreman, fire boss, to have certificate—Temporary employment. It shall be unlawful for the operator of any mine to have in his employ as assistant mine foreman or fire boss any person who does not hold a first or second class certificate of competency issued by the board of examiners: *But, provided*, That whenever any exigency arises by which it is impossible for any operator to secure the immediate services of a certificated man, he may employ any trustworthy and experienced man for a period not exceeding thirty days, and in the event that no person possessing a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [1917 c 36 § 76; RRS § 8711. Formerly RCW 78.32.450, part.]

78.40.318 Foreman in charge underground—
Exception. Underground operations shall be under the charge of a person holding a first class certificate under this chapter: *Provided, however,* That this section shall not apply to prospecting or exploring work where less than ten men are employed underground at any one time, unless the mine inspector, by written notice served on the management of such mine, requires such mine to be under the control of a certificated mine foreman. [1917 c 36 § 77; RRS § 8712. Formerly RCW 78.32.470.]

78.40.321 Notice of change of name of mine. The operator or superintendent of every mine shall, within thirty days, send notice to the mine inspector when any change occurs in the name of a mine, under the provisions of this chapter. [1917 c 36 § 78; RRS § 8713. Formerly RCW 78.38.550.]

78.40.324 Penalty for operating without a foreman. If any mine is worked for more than thirty days without a foreman as required by this chapter, the operator of such mine shall be guilty of a misdemeanor and liable to a penalty not exceeding fifty dollars for every day during which such mine is worked: *Provided, however,* That one foreman may act as foreman at more than one mine operated by the same company in the same camp. [1917 c 36 § 79; RRS § 8714. Formerly RCW 78.32.460.]

78.40.327 Boiler inspections—Report—Penalty. All boilers used for generating steam in and about coal mines must be inspected by a qualified person once in every six months, or oftener if required by the mine inspector. The result of such inspection shall be certified in writing to the mine inspector within thirty days thereafter, on [a] blank furnished by the mine inspection department.

Failure to make such reports shall constitute a misdemeanor. [1917 c 36 § 80; RRS § 8715. Prior: 1891 c 81 § 18, part; 1887 c 21 § 8, part. Formerly RCW 78.36.200.]

78.40.330 Safety devices on boilers. Every boiler must be equipped with water glasses, trycocks, steam gauge, safety valves and such other safety devices as may be required by law. All such devices must be kept in proper adjustment and their condition inspected and reported on in the same manner as provided for the boiler inspection. [1917 c 36 § 81; RRS § 8716. Prior: 1891 c 81 § 18, part; 1887 c 21 § 8, part. Formerly RCW 78.36.210.]

78.40.333 Permit to temporarily locate boiler nearer shaft. In the case of mines being developed where ten men or less are employed on one shift, the mine inspector shall, upon request of the operator, issue a written permit authorizing the placing temporarily of a boiler or boilers nearer than seventy-five feet to a shaft, slope or other opening. [1917 c 36 § 82; RRS § 8717. Formerly RCW 78.36.230.]

78.40.336 Testing safety devices. The engineer or fireman in charge of a boiler or boilers shall keep a constant watch over all safety devices and shall try same frequently to determine their proper adjustment. He shall immediately notify his employer of any defect. [1917 c 36 § 83; RRS § 8718. Formerly RCW 78.36.220.]

78.40.339 Washhouse for employees. Whenever sixty percent of the employees of a coal mine in this state shall petition the operator of such mine to provide a suitable washhouse for their use, free of cost to employees, such operator shall provide a suitable building which shall be convenient to the principal entrance to the mine or group of mines to be used as a washhouse, changing and drying room for the employees of the mine. Such building or washhouse to have sufficient floor space for the accommodation of miners or others using the same. The flooring in such washhouse to be of concrete, tiling or cement, and the flooring in changing room to be optional with the owner as to the material used. Lockers or some other arrangements shall be put in the changing room for the use of employees using same, and shower baths shall be provided in the washroom, one for each twenty men employed on one shift. The operator shall furnish an attendant to look after the operation, ventilation, drying of clothes, and sanitary conditions of the washhouse and changing rooms.

This section shall not apply to mines where less than twenty men are employed, or to mines under development which are not on a permanent operating basis. [1945 c 83 § 1; 1917 c 36 § 84; Rem. Supp. 1945 § 8719. Formerly RCW 78.34.220.]

78.40.342 Fire protection—Automatic sprinklers. At each and every coal mine in this state the owner or operator thereof shall, within three months after this chapter goes into effect, provide and maintain in good condition efficient means of protection against fire at the following places, to wit: Main entrance to hoisting shafts, slopes, permanent escapeways and ventilating fans on surface; also at all underground stables, pump rooms, hoists of more than fifty horsepower, and ventilating fans delivering more than ten thousand cubic feet of air per minute. Said means of fire protection shall consist of sufficient chemical extinguishers of approved type, or of proper hydrants, hose not less than one and one-half inch internal diameter, with suitable connections and nozzles, and pipe lines of not less than two inches internal diameter, to convey water at a pressure of not less than twenty-five pounds per square inch from an adequate supply of each of the aforementioned places.

At mines where open flame lamps are used at all main landings for a distance of two hundred feet from the shaft or slope in all stables, pump rooms, or hoist rooms that are timbered, or where timber is used in such quantities that a fire would be likely to spread, there shall be maintained two lines of automatic sprinklers on each side of the passageway attached to not less than one and one-half inch pipes connected with the fire

fighting water supply, and such sprinklers shall not be more than ten feet apart.

All automatic sprinklers shall be of the fusible plug type and shall not require a temperature of more than one hundred and sixty-five degrees Fahrenheit to release the water. [1917 c 36 § 85; RRS § 8720. Formerly RCW 78.34.610.]

78.40.345 Timber for props. The owner or operator of any coal mine shall provide a sufficient supply of timber at any such mine where the same is required for use as props, so that the workmen may at all times be able to properly secure their working places, and it shall be the duty of the owner or operator to send down into the mine all such props, the same to be delivered at the entrance to the working place, or as may be agreed upon between the employees and the operator. [1917 c 36 § 86; RRS § 8721. Prior: 1891 c 81 § 10; 1887 c 21 § 17. Formerly RCW 78.34.620.]

78.40.348 Notice of lease or sale of a mine. Any mine owner transferring any coal mine shall immediately report such sale or lease to the mine inspector, giving the name or the names of the purchaser, purchasers, or lessee, and the address or addresses of the same. The purchaser, purchasers, or lessee of any such coal mine shall also immediately report to the mine inspector giving the names of the officers and superintendent of such coal mine, with their addresses. [1917 c 36 § 87; 1907 c 105 § 3; RRS § 8722. Formerly RCW 78.38.560.]

78.40.351 Accidents—Inquests—Investigations—Costs. Whenever by reason of any explosion or any other accident in or about any coal mine, whereby loss of life or serious injury has occurred, or is thought to have occurred, it shall be the duty of the person having charge of the mine to give notice thereof to the mine inspector by telephone or telegraph, and if any person is killed thereby, to the coroner of the county, who shall give due notice to the mine inspector if an inquest is to be held. In case of any major or fatal accident, the resident district officers of the miners' organization shall be notified by telephone or telegraph at the same time the mine inspector is notified, and shall have the privilege of appearing at all investigations held to determine the cause of such accident, and to recommend safety measures for the prevention of accidents. If the coroner shall determine to hold an inquest, the mine inspector shall be allowed to testify and offer such testimony as he or she shall deem necessary to thoroughly inform the said inquest of the cause of death, and the said inspector shall have authority at any time to appear before such coroner and jury and question or cross-question any witness, and in choosing a jury for the purpose of holding such inquest it shall be the duty of the coroner to impanel a jury, no one of whom shall be directly or indirectly interested. It shall be the duty of the mine inspector upon being notified as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the safety of the workers, and if the results of the explosion or accident

do not require an investigation by the coroner, the coroner shall proceed to investigate and ascertain the cause of the explosion or accident, and make a record thereof, which the coroner shall file as provided for, and to enable the coroner to make the investigation the coroner shall have the power to compel the attendance of persons to testify, and administer oaths or affirmations. The cost of such investigation shall be paid by the county in which the accident occurred, in the same manner as costs of inquests held by coroners or district judges are paid, and copies of evidence taken at inquests shall be furnished the mine inspector. [1987 c 202 § 235; 1939 c 51 § 2; 1917 c 36 § 88; RRS § 8723. Prior: 1891 c 81 § 15; 1887 c 21 § 9. Formerly RCW 78.38.530.]

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

78.40.354 Certain steampipes to be insulated. No steampipes, through which high pressure steam is conveyed for the purpose of driving pumps or other machinery, shall be laid on traveling or haulage ways, unless they are encased in asbestos or some other suitable material, or so placed that the radiation of heat into the atmosphere of the mine will be prevented as far as possible. [1917 c 36 § 89; RRS § 8724. Formerly RCW 78.34.630.]

78.40.357 Internal combustion engines prohibited—Penalty. When a steam locomotive is used for the purpose of hauling coal out of a mine, the tunnel or tunnels through which the locomotive passes shall be properly ventilated and kept free as far as practicable of noxious gases. The use of steam locomotives shall be prohibited in any mines opened in the state after the passage of this chapter, or in mines already opened that are not now using the same.

The use of mining locomotives, pumping engines, hoists, trucks, or any other form of machinery driven or propelled by internal combustion engines, in which power is generated by burning within the cylinder or cylinders, a mixture of air and gas, or air and alcohol, gasoline, fuel oil, oil distillate, or other liquid fuel, within any coal mine or mines, is hereby declared to be unlawful, and any person or persons, body corporate, agent, manager or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1943 c 211 § 4; 1917 c 36 § 90; Rem. Supp. 1943 § 8725. Formerly RCW 78.34.640.]

78.40.360 Precautions against explosions of dust. In any mine or part of mine where, from the nature of the coal or method of handling the same, an undue quantity of dust is produced either on the roadways or in the working places, which may tend to cause danger of explosion, then all the haulage ways leading thereto and all the haulage roads and working places in such section of the mine, shall be thoroughly and effectively watered by some recognized and approved system of watering, or other treatment equivalent to watering. If, in the opinion of the inspector, an undue quantity of dust is produced and the method employed is not adequate or effective, he may notify the manager in writing and proceed as

provided for in *section 9, article II of this act: *Provided, however,* That the provisions of this section shall not apply to any mine or separate split or panel of such mine if no explosives are permitted and safety lamps are used in such separate part of a mine, unless in the opinion of the inspector this exemption would be dangerous to the persons employed in such section or part of the mine. [1917 c 36 § 91; RRS § 8726. Formerly RCW 78.34.650.]

*Reviser's note: "section 9, article II of this act" (1917 c 36 § 9) is codified in RCW 43.22.210, as amended.

78.40.363 Stables in mines—Storage of hay or straw—Lining of pump rooms. It shall not be lawful to provide a horse or mule stable in any mine unless the same is excavated in solid rock, or built, or thoroughly lined with a fireproof material; and all openings to such stables shall be equipped with fireproof doors, free from all obstruction, which can be closed in case of fire.

No hay or straw shall be taken into any mine unless pressed and made up into compact bales, which shall be kept in a storehouse built apart from the stable and in the same manner as the stable. Under no circumstances shall the hay or straw be stored in the stable.

All permanent underground pump rooms must be thoroughly lined with fireproof material, unless the same are excavated in solid rock. [1917 c 36 § 92; RRS § 8727. Formerly RCW 78.34.660.]

78.40.366 Weight before screening when ton rate employment. It shall be unlawful for any mine owner, lessee or operator of coal mines in the state of Washington, employing miners at ton rates, to pass the output of coal mined by said miners over any screen or other device which will take any part from the value thereof before the same shall have been duly weighed and credited to the employee sending the same to the surface, and accounted for at the legal rate of weights as fixed by the laws of the state of Washington. [1917 c 36 § 93; RRS § 8728. Prior: 1891 c 161 § 1. Formerly RCW 78.32.040.]

78.40.369 Escape shafts, equipment—Signboards. All escapement shafts or slopes over thirty degrees pitch shall be equipped with stairways or ladders having landing places or platforms at reasonable distances apart or, in lieu thereof, such hoisting apparatus as will enable the employees in the mine to make safe and speedy exit in case of danger. At all points where the passageway to the escapement shaft and other places of exit is intersected by other roadways or entries, conspicuous signboards, subject to the approval of the mine inspector, shall be placed indicating the direction it is necessary to take in order to reach such place of exit. [1917 c 36 § 94; RRS § 8729. Prior: 1909 c 117 § 3; 1907 c 105 § 1, part; 1891 c 81 § 3; 1887 c 21 § 3, part. Formerly RCW 78.34.720.]

78.40.372 Width of barrier pillars—Penalty. The operator of every coal mine shall leave barrier pillars at

least fifty feet in width along the line of the property he operates; failure to do so shall constitute a gross misdemeanor and he shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars, or imprisonment of not less than six months: *Provided, however,* That nothing herein shall be construed as forbidding owners or operators of adjacent properties from extracting all the coal after they have agreed that same might be done. [1917 c 36 § 95; RRS § 8730. Formerly RCW 78.34.670.]

78.40.375 Operator's reports, annual and monthly—Contents—Penalty. On or before the twenty-fifth day of January in each year, the operator or superintendent of every mine shall send to the office of the state mine inspector a correct report specifying with respect to the year ending the thirty-first of December preceding, containing the following:

Name of company -----
Post office address -----

OFFICERS Name Address
President -----
Manager -----
General superintendent -----
Mining engineer -----
Superintendent -----
General foreman -----
Outside foreman -----
Inside mine foreman -----
Location of mine -----
On what railroad -----
Principal market -----
Average value of coal per short ton at mine -----
Average value of coke per short ton at mine -----
Price paid per gross ton for mining -----
Are wages paid monthly or semi-monthly -----
Number of feet of gangway or entry driven -----
Also number of feet of slope or shaft driven or sunk during year -----
Scale of wages paid above ground -----
Scale of wages paid underground in the different classes -----

A report of ventilating and other important machinery installed during the year.

A report of new openings.

On or before the fifteenth day of each month, the operator or superintendent shall also furnish the state mine inspector with a monthly report relative to the month preceding, containing the following information:

Name of company -----
Name or number of mine -----
Location of mine -----
County -----

REPORT IN SHORT TONS

No. tons of coal shipped -----
 No. sold to employees and local trade -----
 No. used for power -----
 No. charged into ovens for coke -----
 Total production of coal -----
 Total production of coke -----
 No. days operated -----
 No. inside employees -----
 No. outside employees -----
 No. killed -----
 No. injured -----
 No. widows -----
 No. orphans -----

The operator or the superintendent who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor. [1943 c 211 § 5; 1917 c 36 § 96; Rem. Supp. 1943 § 8731. Formerly RCW 78.38.570 and 78.38.580.]

78.40.378 Shelter holes on haulage roads. The operator shall provide that all mechanical haulage roads, driven after this chapter takes effect, where separate traveling ways are not maintained, where general clearance is less than two and one-half feet on one side shall be provided with shelter holes not more than sixty feet apart, giving clearance not less than three feet wide and four feet high along the road. They shall be kept white-washed. [1917 c 36 § 97; RRS § 8732. Formerly RCW 78.34.680.]

78.40.381 Safeguarding personnel from machinery, stairs, etc. All machinery used in or about any mine that when in motion would be dangerous to persons coming in contact therewith, such as engines, wheels, screens, shafting, gears and belting, shall be guarded by covering or railing to prevent persons from walking or falling against same. All sides of stairs, trestles and platforms around mines shall be provided with hand and guard railing to prevent persons from falling over the sides. [1917 c 36 § 98; RRS § 8733. Formerly RCW 78.34.690.]

ARTICLE IX DUTIES OF OFFICIALS

78.40.390 Superintendent to see laws are observed. The superintendent shall, at least once every week, read, examine carefully and countersign all reports entered in the mine record book by the mine foreman, and if he finds on such examination that the law is being violated in any particular, he shall order the mine foreman to stop such violation forthwith, and shall see that his order is complied with. [1917 c 36 § 99; RRS § 8734. Formerly RCW 78.32.400.]

78.40.393 Superintendent, duties as to other officials. The superintendent shall not obstruct the mine foreman or other officials in the fulfillment of any of their duties, as required by this chapter, but he shall direct that the mine foreman and all other employees under him comply

with the law in all its provisions. [1917 c 36 § 100; RRS § 8735. Formerly RCW 78.32.410.]

78.40.396 Superintendent or assistant to visit working places. It shall be the duty of every mine superintendent to visit, or to have his assistant superintendent visit every working place in every mine under his charge once every sixty days: *Provided*, That the mine foreman shall not be considered as the assistant to the superintendent for this purpose. [1917 c 36 § 101; RRS § 8736. Formerly RCW 78.32.420.]

78.40.399 Operator's duties—Posting rules and notices. The operator shall keep on hand at the mine a supply of the printed rules and notices and record books required by this chapter. He shall see that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept in such condition that they will always be legible. [1917 c 36 § 102; RRS § 8737. Prior: 1891 c 81 § 20. Formerly RCW 78.38.500.]

78.40.402 Foreman—Duties as to interior of mines. The mine foreman shall keep a careful watch over the ventilating apparatus, the ventilation, airways, traveling ways, timbering and drainage, and shall see that all stoppings along the airways are properly built. He shall also see that the proper crosscuts or breakthroughs are made in the pillars of all chutes, breasts, rooms, gangways, entries and levels, in accordance with this chapter, and that they are closed when necessary so that the ventilating current can be conducted in sufficient quantities through the last crosscut or breakthrough and to the working places by means of brattices or other devices, and all other duties pertaining to the safety of the men, as provided for in this chapter. [1917 c 36 § 103; RRS § 8738. Formerly RCW 78.32.480.]

78.40.405 Foreman—Duties as to men in mines. The mine foreman shall have charge of all inside workings and of the persons employed therein, in order that all of the provisions of this chapter as far as they relate to his duties concerning the safety of the mine and the persons employed therein be complied with, and the regulations prescribed for each class of workmen under his charge be carried out in the strictest manner possible. [1917 c 36 § 104; RRS § 8739. Formerly RCW 78.32.490.]

78.40.408 Foreman—Records. The mine foreman shall each day write and sign with ink in a book provided for that purpose, a report of the general condition of the mine, which report shall clearly state any unusual danger that may have come under his observation during the day, or any unusual danger reported to him by his assistants, or by the fire bosses. The report shall also state the manner in which the requirements of the law are not complied with.

He, or his assistant, shall also once each week enter plainly with ink in said book a true report of all air measurements required by this chapter, designating the

place, the area of each breakthrough and entry separately, the velocity of the air in each breakthrough and entry, and the number of men employed in each separate split of air, with the date when measurements were taken. Said book shall at all times be kept in the main office at the mine for examination by the inspector and by any persons working in the mine. Such examinations made by others than inspectors shall be in the presence of the superintendent or mine foreman.

The mine foreman shall also each day read carefully and countersign in ink all reports entered in the fire bosses' book. [1917 c 36 § 105; RRS § 8740. Formerly RCW 78.32.500.]

78.40.411 Foreman—Duty to drill men on means of escape. In order that men may familiarize themselves with escapements to be used in case of accidents, it shall be the duty of the mine foreman to cause all miners and other underground employees to walk or climb to or from their working places to the surface by way of one of the traveling ways, escapements, or outlets, at least once every six months. [1917 c 36 § 106; RRS § 8741. Formerly RCW 78.32.530.]

78.40.414 Foreman—Duties as to ventilation. When operations are temporarily suspended in a mine, the mine foreman shall see that a danger sign is placed across the mine entrance, which sign shall be sufficient warning for persons not to enter the mine. If the circulation of air through the mine be stopped, each entrance to said mine shall be fenced off in such manner as will ordinarily prevent persons from entering said mine, and a danger sign shall be displayed upon said fence at each entrance. The mine foreman shall see that all danger signs used at the mine are in good condition, and if they become defective he shall cause same to be repaired, or notify the superintendent.

In case of accident to a ventilating fan or its machinery whereby the ventilation in a mine is, or is about to be seriously interrupted, the mine foreman shall order the men to withdraw immediately from the mine, and he shall not allow them to return to their work until the ventilation has been restored and the mine has been thoroughly examined by him, or by an assistant mine foreman or fire boss, and reported safe.

In case the operation of the ventilating fan is stopped at a gaseous mine because of the suspension of the operations in the mine, the mine foreman shall not allow the men employed therein to enter the mine until the ventilation has been restored by the operation of the fan for at least twelve hours and the mine has been thoroughly examined by him, or by an assistant mine foreman or fire boss, and reported safe. [1919 c 201 § 5; 1917 c 36 § 107; RRS § 8742. Prior: 1897 c 45 § 8. Formerly RCW 78.32.520.]

78.40.417 Foreman—Weekly examination of mine. Whenever any dangerous condition is known to exist, or is reported by others to the mine foreman, he shall give prompt attention to its removal, and in case it is impracticable to remove the danger at once, he shall post

danger signs warning every person whose safety is menaced thereby, to remain away from the place that the dangerous conditions affect. He or his assistant shall once each week travel and examine all the air courses and traveling ways, and in addition all the openings that give access to old workings or falls. He shall record and sign in ink in a book provided for that purpose the results of these weekly examinations. [1943 c 211 § 6; 1917 c 36 § 108; Rem. Supp. 1943 § 8743. Formerly RCW 78.32.510.]

78.40.420 Foreman—Precautions against gas and water. In any working place that is being driven within supposedly dangerous proximity to an abandoned mine suspected of containing explosive gases, or that may contain a dangerous accumulation of water, the mine foreman shall see that at least one bore hole shall be maintained not less than twenty feet in advance of the face; and in a seam of coal on either side of the bore hole, flank holes shall be driven not less than twelve feet in advance, and any place driven to tap water or gas shall not be more than eight feet wide. [1917 c 36 § 109; RRS § 8744. Prior: 1891 c 81 § 14; 1887 c 21 § 5. Formerly RCW 78.32.540.]

78.40.423 Foreman—Duty to check fire bosses. The mine foreman shall see as often as practicable that the fire boss has left his mark, as required by this chapter, in places examined or reported examined. [1917 c 36 § 110; RRS § 8745. Formerly RCW 78.32.560.]

78.40.426 Foreman—Duty to visit working places. The mine foreman, his assistant, or fire boss, shall visit each working place once each shift while the employees are at work, and in addition thereto shall give special care, oversight and attention to the men drawing pillars. [1917 c 36 § 111; RRS § 8746. Formerly RCW 78.32.570.]

78.40.429 Foreman—Duties in case of accidents. It shall be the duty of the mine foreman, or his assistant, in case of injury to employees while at work in the mine, to at once visit the scene of the accident, see that the injured person or persons are given all the aid that can possibly be given which will add to their comfort and safety. After being treated with all the skill known to the foreman or his assistant, the injured person or persons shall be carefully wrapped up and taken to their homes or the hospital. [1917 c 36 § 112; RRS § 8747. Formerly RCW 78.32.550.]

78.40.432 Fire boss—Duties in general. It shall be the duty of the fire boss to examine carefully not more than three hours before a first shift enters the mine, every working place in his charge in which men have not been employed at the working face within ninety minutes previous to the starting time of such shift all open places adjacent to live workings, and every unfenced road to abandoned workings. He shall see that the air current is traveling in its proper course. In making the examination he shall use no other than an approved

safety lamp. The fire boss shall examine for all dangers in all portions of the mine under his charge, and after each examination he shall leave at or near the working face of every place examined the date of the examination as evidence that he has performed his duty. [1917 c 36 § 113; RRS § 8748. Formerly RCW 78.32.590.]

78.40.435 Fire boss—Danger signs. At the entrance to and in crosscuts or breakthroughs to any working place where explosive gas is discovered or where there is immediate danger found to exist from any other cause, the fire boss shall place a danger sign, which shall be sufficient warning for persons not to enter.

The danger sign shall consist of a lagging, board or piece of timber, or other obstruction, placed across the entrance to the working place, and in crosscuts and breakthroughs open to such working place, so that it is distinctly visible and marked plainly showing that danger exists beyond. [1917 c 36 § 114; RRS § 8749. Formerly RCW 78.32.600.]

78.40.438 Fire boss—Record of inspections—Procedure upon report of gas. Each fire boss shall, immediately after making his inspection and before the employees are allowed to enter the mine, report on a bulletin board provided for that purpose at the entrance to the mine, a true record of such inspection, designating each place where gas is found, also that all other places are clear. A like report of such inspection shall immediately be made by the fire boss, with ink, in a book kept for that purpose at the mine office on the surface, and in addition shall set forth the time of the inspection, the reason for the presence of any danger found, the means taken and by whom for the removal of same. If explosive gas is found the report shall show as near as possible the amount found, and time the place was clear. The fire bosses' record shall, at all times, be accessible to the mine inspector or his deputy, and to the employees of the mine in the presence of a mine official. The fire boss, mine foreman, or his assistant must reexamine all places in which gas is reported in advance of employees working in such places. After making such examination he shall personally direct the removal of said gas or other danger. Gas shall not be removed by brushing. [1917 c 36 § 115; RRS § 8750. Formerly RCW 78.32.610.]

78.40.441 Shot firers—Reports. In all parts of a mine where explosive gas is being generated, or dust exists in such quantities as to be dangerous or liable to cause an explosion from blowout or windy shots, there shall be employed a sufficient number of competent persons to act as shot firers, whose duty it shall be to fire all shots properly placed by the miners, and refuse to fire any shots improperly placed. No blasts in such part of a mine shall be fired by any other person than a shot firer, fire boss or foreman. Incombustible material for tamping must be used for that purpose, and the mine foreman shall supply same at convenient places inside the mine. Under no circumstances shall coal dust or any other combustible material be used for tamping. Each shot firer shall report to the fire boss, mine foreman, or

his assistant, every shot that he has refused to fire, every blown out shot, and every shot that has missed fire, and a record shall be kept of same. [1917 c 36 § 116; RRS § 8751. Formerly RCW 78.38.270 and 78.38.350, part.]

78.40.444 Shot firing—Restrictions on. No shot firer or any other person shall fire a shot in any working place if he can detect explosive gas in the place. In dusty mines no shot shall be fired unless the place in which the shot is to be fired is thoroughly wetted or otherwise treated to prevent the existence of any dust for a distance of not less than one hundred feet from the shot to be fired.

When the presence of coal dust is likely to enter into an explosion hazard, the chief mine inspector may require that the dry area be thoroughly rock dusted to the extent that the incombustible content shall be at least seventy percent.

In all advancing entries, counters and haulage inclines where an undue quantity of dry coal dust is present, the chief mine inspector may require that the rock dusting shall be kept within one hundred feet of the working face. The rock dust shall be of such material as will meet the requirements of the U.S. bureau of mines in exclusion of deleterious substances. [1943 c 211 § 7; 1917 c 36 § 117; Rem. Supp. 1943 § 8752. Formerly RCW 78.38.330.]

ARTICLE X MINE RESCUE EQUIPMENT

78.40.450 Rescue apparatus and supplies—Reports on. Within one year after *this chapter goes into effect, every coal mine employing as many as twenty underground men, shall have and maintain ready for use at all times, at least three sets of mine rescue apparatus, and one reviving device, of a type approved by the U.S. bureau of mines.

For each one hundred underground men in addition to the first twenty, one additional apparatus shall be maintained, up to six sets.

At every coal mine where mine rescue equipment is maintained, supplies for same shall be kept on hand to last at least twenty-four hours. The superintendent of the mine, or some person designated by him for that purpose, shall examine each apparatus once each month and report the condition of same, also the amount of supplies on hand at the time of such examination. This report shall be made in writing by the person making the examination and a record of same shall be kept at the mine office and shall be accessible to the mine inspector or his deputy at all times.

Whenever two or more coal mines are operated by the same company within a radius of twenty miles, they shall be considered as one mine. However, mines within a radius of twenty miles and connected by a wagon road or railroad, may agree to equip and maintain one central station at which there shall not be less than six apparatuses and one reviving device; when more than four mines are associated at one central station, an additional machine must be added: *Provided, however,* That any coal mining operation within fifty miles of a properly

equipped and maintained U.S. bureau of mines rescue station, in lieu of the provisions of this section, shall be required to furnish such personnel as the bureau of mines or the state mine inspector may require for adequate training in mine rescue and first aid work, the cost of the training of said personnel to be borne by the mine operator. [1947 c 166 § 4; 1943 c 211 § 8; 1917 c 36 § 118; Rem. Supp. 1947 § 8753. Formerly RCW 78.34.450.]

***Reviser's note:** "this chapter goes into effect": "this act" used in session law language is changed to "this chapter"; the phrase was first used in the 1917 act, which took effect at midnight, June 6, 1917. The 1947 amendatory act took effect at midnight, June 11, 1947.

78.40.453 Stretchers required—Use. The operator or superintendent of every mine employing from five to fifty persons, shall provide and keep in good condition near the principal entrance to the mine, one stretcher. When more than fifty persons are employed, they shall keep at least two stretchers. These stretchers shall be used for conveying to his abode, or to the hospital if necessary, any person who may be injured while in the discharge of his duties. [1917 c 36 § 119; RRS § 8754. Prior: 1891 c 81 § 13. Formerly RCW 78.34.460, part.]

78.40.456 Woolen blankets required. Suitable woolen blankets shall be kept on hand for each stretcher. [1917 c 36 § 120; RRS § 8755. Formerly RCW 78.34.460, part.]

78.40.459 Medical supplies required. At all times there shall be provided bandages, splints, and other medical supplies, to render first aid and relief to employees who may be injured. These supplies shall be kept in a suitable room near the entrance to the mine. [1917 c 36 § 121; RRS § 8756. Formerly RCW 78.34.480.]

78.40.462 First aid kits—Penalties. At each working level, or entry, of every mine in this state, the operating company shall maintain a box of first aid supplies equivalent to the American Red Cross (industrial) first aid box. If these boxes are kept locked, the keys shall always be near at hand and plainly visible. Such keys may be kept under glass as a fire alarm box key is kept. Additional keys may be given to employees selected by the mine foreman on each level or working section of the mine. The foreman shall keep a list of those who have keys in their possession posted on the (industrial) first aid box nearest their working places. In addition to the above first aid boxes, the operating company of each mine shall furnish each driver or motorman with a metallic covered packet equivalent to those sold by the American Red Cross. At all times when they are underground or at their respective places of employment, said drivers or motormen shall have the metallic packets in their possession. Failure of the operator to provide the supplies required by this section shall constitute a misdemeanor. Any person destroying or stealing any of the first aid supplies shall be guilty of a misdemeanor. [1917 c 36 § 122; RRS § 8757. Formerly RCW 78.34.490.]

ARTICLE XI POWDER AND EXPLOSIVES

78.40.470 Explosives, how and where to be kept. Every person who has powder or other explosives in a mine shall keep the same in a proper, closed receptacle. Said receptacle shall be kept as far as practicable from the track or chute; and all powder receptacles shall be kept as far as practicable from each other, and each in a secluded place. Detonators shall at all times be kept in securely closed cases, separate and apart from other explosives, until required for use. [1917 c 36 § 123; RRS § 8758. Formerly RCW 78.38.200.]

Storage of explosives—Issuance to workmen: RCW 78.40.488.

78.40.473 Use of lamps and lighted pipes near explosives—Opening receptacles. Whenever a workman using an open light is about to open a receptacle containing explosives, and while handling the explosives, he shall place and keep his lamp at least five feet distant from said explosive and in such position that the air currents cannot convey sparks to it, and at such time no person shall approach nearer than five feet to any explosive with an open lamp, lighted pipe, or anything containing fire, except safety lamps, unless such explosive is contained in a proper closed receptacle. No miner, workman, or other person shall open any receptacle containing an explosive except in the manner prescribed by the manufacturer thereof, and it shall be unlawful for any person to have in his possession in any mine any receptacle containing explosives which has been opened in violation of this chapter. [1917 c 36 § 124; RRS § 8759. Formerly RCW 78.38.210 and 78.38.220, part.]

Limitations on storage and handling of explosives: RCW 78.40.651.

Precautions in handling explosives: RCW 78.40.675.

78.40.476 High explosives. No high explosive shall be stored in any mine and no more shall be taken into any mine at any one time, by any person, than is required in one shift. The quantity used shall be subject to the approval of the mine inspector. [1917 c 36 § 125; RRS § 8760. Formerly RCW 78.38.230.]

Quantity of explosives allowed in mine: RCW 78.40.648.

Storage of explosives—Issuance to workmen: RCW 78.40.488.

78.40.479 Firing dependent shots—Permit. No person shall fire a dependent shot in the coal as hereinafter defined. A dependent shot is a shot dependent on another shot so placed as to make an opening sufficient for the dependent shot to do its work properly. At mines where solid shooting is allowed the opening shot shall be fired first and no dependent shot shall be fired at that time. In no case shall more than one kind of explosive be used in the same drill hole: *Provided*, That in any mine where the coal bed worked is less than three feet between walls and no gas or dust is present, where it can be shown to the satisfaction of the mine inspector that the above rule would prohibit the operating company to mine the coal at a profit, the mine inspector may grant him a permit to suit his conditions. [1917 c 36 § 126; RRS § 8761. Formerly RCW 78.38.310.]

78.40.482 Black powder, how handled. Black powder for use in mines shall be put up in metallic cans or canisters, or receptacles of equally safe material. No black powder, high explosive, or detonators shall be hauled on any electric motor trip in any mine, unless the same are encased in nonconductive boxes or receptacles: *Provided*, That they may be hauled in nonconductive car.

No black powder, other than that taken by each man for his own use, shall be hauled on man trips. [1917 c 36 § 127; RRS § 8762. Formerly RCW 78.38.260.]

78.40.485 Needles and tamping bars—Depth of holes—Unconfined shots—Penalty. The needle used in preparing a blast of black powder shall be made of copper, and the tamping bar shall be tipped with at least five inches of solid copper. All other explosives where a cap or detonator is used for the purpose of exploding the blast, shall be tamped with a wooden tamping bar. In no case shall iron or steel or other metal that is liable to cause a spark while tamping, be used for the purpose of tamping any explosive. Neither shall a scraper be used for tamping. It shall be unlawful for any person to have in his possession in the mine underground, any iron or steel needle or tamping bar not tipped as above required.

No hole shall be drilled more than six feet in depth for the purpose of blasting: *Provided, however*, That where mining machines are used holes may be drilled to the depth of the cut.

Bulldozing, mudcapping, or other unconfined shots shall not be fired in any coal mine, excepting and provided the confronting situation is such that it cannot safely be overcome by any other method. In such case, and then only in the interests of safe practice may such a shot or shots be placed, and the area within fifty feet thereof shall be thoroughly wetted down or rock dusted before firing, and the shot or shots be packed or heavily capped with rock dust.

Any violation of this section shall be a misdemeanor and the offender shall be punished under the provisions of this chapter. [1943 c 211 § 9; 1917 c 36 § 128; Rem. Supp. 1943 § 8763. Prior: 1887 c 21 § 19. Formerly RCW 78.38.280.]

Blasting holes: RCW 78.40.681.

Types of tamping bars for blasting enumerated: RCW 78.40.678.

78.40.488 Storage of explosives—Issuance to workmen—Penalty. Each person, firm or corporation, engaged in coal mining, requiring the use of powder or other explosives, shall provide (subject to the approval of the mine inspector) at or near the entrance of each coal mine operated, at some suitable place near such work, a suitable distributing magazine for the storage of such powder or other explosives. There shall be posted upon such magazine a notice printed in letters not less than three inches in height, that such magazine contains explosives. No person shall store or keep in any magazine mentioned in this section, any powder or other explosive in excess of one ton. Such powder or other explosives shall be issued daily in quantities not to exceed the amount used by each workman in one shift, in proper receptacles. Any miner taking powder into the mine and

having to return the same on account of not being able to work, may return the same to the operator and the operator shall receive it. Any person or corporation violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor. [1917 c 36 § 129; RRS § 8764. Prior: 1911 c 65 § 1. Formerly RCW 78.38.240.]

Explosives, how and where to be kept: RCW 78.40.470.

Limitations on storage and handling of explosives: RCW 78.40.651.

ARTICLE XII SAFETY LAMPS

78.40.500 Safety lamps—Type—Examination. In every working of a coal mine approaching any place where there is likely to be an accumulation of explosive gases, or in any working place where there is imminent danger from explosive gases, no light or lamp other than a magnetic locked safety lamp or electric lamp shall be allowed or used, except by superintendents, shot lighters or other certified men, who may use such lamps as may be approved by the mine inspector.

Whenever safety lamps are required in any mine they shall be the property of the owner of said mine, and a competent person who shall be appointed for that purpose shall examine every safety lamp immediately before it is taken into the workings for use and ascertain it to be clean, safe and securely locked; and safety lamps shall not be used until they have been examined and found safe, clean and securely locked. [1917 c 36 § 131; RRS § 8766. Prior: 1909 c 57 § 1. Formerly RCW 78.36.010.]

Prerequisite to entrusting lamps to workmen: RCW 78.40.657.

Unauthorized possession of keys to safety lamps—Prosecution: RCW 78.40.660.

78.40.503 Safety lamps—Open lights prohibited, when. At mines where the danger from explosive gas requires the use of safety lamps, no open lights shall be used in that part or district of the mine where safety lamps are in use. [1917 c 36 § 132; RRS § 8767. Formerly RCW 78.36.020.]

78.40.506 Safety lamps—Tampering with lamps or using other lighting devices—Penalty. In any mine where locked safety lamps are used, any person other than those authorized by this chapter, opening or tampering with one of said safety lamps, or found with matches or any lighting device other than safety lamps, shall be guilty of a misdemeanor and upon conviction thereof he shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisonment for a term of not more than one year: *Provided, however*, This shall not prohibit the use of any flame used in making repairs to any machinery or wires when such repairs are made on the intake air. [1917 c 36 § 133; RRS § 8768. Prior: 1909 c 57 § 3, part. Formerly RCW 78.36.040.]

78.40.509 Safety lamps—Penalty. For the violation of any provisions of RCW 78.40.500 and 78.40.503, the operator or employee of any mine shall be deemed guilty of a misdemeanor, and upon conviction thereof

may be fined in any sum not less than fifty dollars nor more than two hundred dollars, and in addition thereto the mine inspector shall have authority and it shall be his duty to close such mine until the provisions of this chapter shall be complied with. [1917 c 36 § 134; RRS § 8769. Prior: 1909 c 57 § 3, part. Formerly RCW 78.36.030.]

78.40.512 Safety lamps—Appeal—Number of lamps. The operator of any mine may appeal to the mining board when in his judgment the order of the mine inspector to place a mine on safety lamps is unreasonable. The decision of the board shall be final.

At every mine in this state the operator shall provide and maintain in condition for use, not less than four approved safety lamps. [1917 c 36 § 135; RRS § 8770. Formerly RCW 78.36.050.]

ARTICLE XIII SHAFT SINKING

78.40.515 Shaft driving to be open to inspection. Any shaft or other opening in process of opening or driving for the purpose of mining coal shall be subject to the inspection of the mine inspector. [1917 c 36 § 136; RRS § 8771. Formerly RCW 78.38.020.]

78.40.518 Precautions against falling material. Over every shaft that is being sunk, or that shall hereafter be sunk, there shall be a safe and substantial structure erected to support the sheaves or pulleys at a height of not less than twenty-five feet above the tipping place. The landing platform of such shaft shall be so arranged that material cannot fall down the shaft while the bucket is being emptied or taken from the hoisting rope. If provisions are made to land the bucket on a truck, said truck and platform shall be so arranged that material cannot fall into the shaft. [1917 c 36 § 137; RRS § 8772. Formerly RCW 78.38.030.]

78.40.521 Hoisting methods. Rock or coal shall not be hoisted except in a bucket or on a cage when men are in the bottom of a shaft, and said bucket or cage must be connected to the hoisting rope by a safety hook or clevis or other safety attachment, and said bucket shall be so arranged that there will be no danger of its tipping over while the bucket is being hoisted or lowered. The rope shall be fastened to the side of the drum, and not less than three coils of rope shall always remain on the drum. In shafts over one hundred feet in depth, such shafts shall be provided with guides and guide attachments applied in such manner as to prevent the bucket from swinging while descending or ascending, and such guide or guide attachments shall be maintained at a distance of not more than seventy-five feet from the bottom of such shaft, until its sinking shall have been completed. [1917 c 36 § 138; RRS § 8773. Formerly RCW 78.36.900.]

78.40.524 Shaft platforms. Whenever persons are employed on platforms in shafts the person in charge must see that said platforms are properly and safely

constructed and secured. [1917 c 36 § 139; RRS § 8774. Formerly RCW 78.38.040.]

78.40.527 Shaft levels to be made safe. Where the strata are not safe, every shaft level shall be securely cased, lined, or otherwise made secure, and the person in charge shall see that all loose rock or other material on the sides of the shaft, or on the timber in the shaft, shall not be allowed to remain on said timber or sides of the shaft after each blast. [1917 c 36 § 140; RRS § 8775. Formerly RCW 78.38.050.]

78.40.530 Precaution when gas in shaft—Blasting in shaft sinking. Where explosive gas is encountered in sinking shafts, the person in charge shall see that the shaft is examined before each shift of men enters to work and before the men descend after each blast. All blasts in shaft sinking shall be exploded by an electric battery placed on the surface. [1917 c 36 § 141; RRS § 8776. Formerly RCW 78.38.060.]

78.40.533 Ventilating shafts while being sunk. Provision shall be made for the proper ventilation of shafts while they are being sunk. [1917 c 36 § 142; RRS § 8777. Formerly RCW 78.38.070.]

78.40.536 Restrictions on riding buckets. Not more than four persons shall be hoisted or lowered in or on a bucket in a shaft at one time, and no person shall ride on a loaded bucket. [1917 c 36 § 143; RRS § 8778. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.880, part.]

Human capacity of cages—Attendant: RCW 78.40.287.

Men and materials not to be hoisted together: RCW 78.40.284.

ARTICLE XIV RULES FOR THE INSTALLATION OF ELECTRICITY

78.40.540 Compliance with rules—Definitions. The operator, superintendent, or mine foreman in charge of any coal mine in which electricity is used as a means of power, shall, within six months after the passage of this chapter, comply with the following rules:

DEFINITIONS

Potential: The terms "potential" and "voltage" are synonymous and mean electrical pressure.

Difference of potential: The expression "difference of potential" means the difference of electrical pressure existing between any two points of an electrical system, or between any point of such system and the earth, as determined by a volt meter.

Potential of a circuit: The potential or voltage of a circuit, machine, or any piece of electrical apparatus, is the potential normally existing between the conductors of such circuit or the terminals of such machine or apparatus.

(1) Where the conditions of the supply of electricity are such that the difference in potential between any points of the circuit does not exceed three hundred volts, the supply shall be deemed a low voltage supply.

(2) Where the conditions of the supply of electricity are such that the difference in the potential between any two points in the circuit may at any time exceed three hundred volts, but does not exceed six hundred volts, the supply shall be deemed a medium voltage supply.

(3) Where the conditions of the supply of electricity are such that the difference of potential between any two points in the circuit exceeds six hundred volts, the supply shall be deemed a high voltage supply.

Grounding: Grounding any part of an electric system shall consist in so connecting such part to the earth that there shall be no difference of potential between them.

Underground station: An underground station is herein considered as any place where electrical machinery is permanently installed. [1917 c 36 § 144; RRS § 8779. Formerly RCW 78.36.600.]

78.40.543 Grounding. All metallic coverings, armoring of cables other than trailing cables, and, where installed underground, the frames and bed-plates of generators, transformers and motors, other than low voltage portable motors, shall be efficiently grounded, as shall also the neutral wire of three wire continuous current systems. [1917 c 36 § 145; RRS § 8780. Formerly RCW 78.36.610.]

78.40.546 Voltage underground—Installations—Danger signs. No higher voltage than medium voltage shall be used underground, except for transmission or for application to transformers, or other apparatus, in which the whole of the high voltage circuit is stationary.

In gaseous mines, high voltage transmission cables shall be installed in the intake airways only, and high voltage transformers shall be installed only in suitable chambers ventilated by the intake air which has not passed through or by a gaseous district.

All high voltage machines, apparatus, and lines shall be so marked as to clearly indicate that they are dangerous by the use of the word "danger" placed at frequent intervals. [1917 c 36 § 146; RRS § 8781. Formerly RCW 78.36.620.]

78.40.549 Switchboards. Switchboards: Main and distribution switch and fuse boards, underground, shall be made of incombustible insulating material, such as marble or slate, free from metallic veins, and be fixed in as dry a situation as practicable. [1917 c 36 § 147; RRS § 8782. Formerly RCW 78.36.630.]

78.40.552 Gloves and mats for repairmen. Precaution against shock: Gloves or mats of rubber or other suitable insulating material shall be provided and used by persons so engaged when repairs are made to the live parts of any electrical apparatus, or when the live parts of electrical apparatus have to be handled for the purpose of adjustment. [1917 c 36 § 148; RRS § 8783. Formerly RCW 78.36.640.]

78.40.555 Meddling with electrical system—Penalty. Any person who shall wilfully damage, or, without

authority, alter or make connection to any portion of a mine electrical system, shall be guilty of a misdemeanor. [1917 c 36 § 149; RRS § 8784. Formerly RCW 78.36.650.]

78.40.558 Defects to be reported. Report of defective equipment: In the event of a breakdown, or of damage or injury to any portion of the electrical equipment of a mine, or of overheating, or of the appearance of sparks or arcs outside of enclosing casings, or in the event of any portion of the equipment, not a part of the electrical circuit, becoming alive, every such occurrence shall be promptly reported to the person in charge of the electrical equipment. [1917 c 36 § 150; RRS § 8785. Formerly RCW 78.36.660.]

78.40.561 Underground installations—Authorized personnel only—Fire protection. Underground stations and transformer rooms: Switchboards: All switches, circuit breakers, rheostats, fuses and instruments used in connection with underground motor-generators, rotary converters, high voltage motors, transformers, and low and medium voltage motors of more than fifty horsepower capacity, shall be installed upon a suitable switchboard, or its equivalent. Similar equipment, for low and medium voltage motors of fifty horsepower and less, may be separately installed if mounted upon installing bases of slate or equivalent insulating material.

In underground stations where switchboards are installed, there shall be a passageway in front of the switchboard not less than five feet in width, and if there are any high voltage connections at the back of the switchboard, any passageway behind the switchboard shall not be less than three feet clear.

Unauthorized persons: No person other than one authorized by the mine foreman shall enter a station or transformer room, or interfere with the workings of any apparatus connected therewith.

Fire equipment: Fire equipment of an approved type shall be kept in electrical stations and transformer rooms, ready for immediate use in extinguishing fires. [1917 c 36 § 151; RRS § 8786. Formerly RCW 78.36.670.]

78.40.564 Insulation. Transmission circuits and conductors: Power and light circuits: All high pressure wires used inside of the mines shall be in the form of insulated, lead covered or armored conductors, subject to insulation tests, and with carrying capacity according to the rules of the National Board of Fire Underwriters.

Medium or low pressure conductors may be bare, except in gaseous portions of the mines, where they may be used only on intake air. No bare conductors shall be used in rooms, or beyond the last cut-through in intake entries.

All underground cables and wires, other than trailing cables, unless provided with grounded or metallic covering, shall be supported by means of efficient insulators. Conductors connecting lamps to the power supply shall in all cases be insulated.

Main circuits: Every main circuit coming from generating or transformer stations shall there be provided with switches, fuses or circuit breakers.

In any gaseous mine, or gaseous portion of a mine, the electrical supply shall be brought underground only through such portions of the mine as are ventilated by the intake air, unless in lead incased cables.

Grounded circuits: One side of the grounded circuits shall be very effectively insulated from earth.

Underground trolley: In underground roads the trolley wires shall be securely supported on hangers placed at such intervals that the sag between points of support shall not exceed three inches. The sag between points of support can exceed three inches if the height of the trolley wires above the rail is five feet or more and does not touch the roof when the trolley passes under.

In underground haulage roads where the potential is higher than low voltage, all trolley or other bare power wires which are placed less than six and one-half feet above the top rail, shall be efficiently protected. This protection shall consist in placing boards along the wire, which shall extend below it, or the use of other approved devices that will afford the same protection: *Provided*, That this rule shall not apply to entries or gangways already driven where the height is less than five feet above the lower rail.

All low pressure trolley wires must be guarded in front of loading chutes, slants, landings and partings where men are required to regularly work or pass under same.

All branch trolley lines shall be fitted with an automatic trolley switch or section insulator and line switch, or some other device that will allow the current to be shut off from such branch headings.

Joints in conductors: All joints in conductors shall be mechanically and electrically efficient, and wherever it is possible to do so, they shall be soldered. Wherever the conductors cannot be soldered together, suitable screw clamps or connectors shall be used. All joints in insulated wire shall, after the joint is complete, be reinsulated to at least the same extent as the remainder of the wire.

Where lead covered or armored cable is used, the lead or armor shall be electrically continuous throughout and shall be efficiently grounded.

Cables entering fittings: The exposed end of cables where they enter fittings of any description, shall be so protected and finished off that moisture cannot enter the cable, or the insulating material, if of an oily or viscous nature, leak.

Where unarmored cables or wires pass through metal frames, or into boxes or motor casings, the holes shall be substantially bushed with insulating bushings, and, where necessary, with gas tight bushings which cannot readily become displaced.

Joints in cables: Where cables other than signal cables are joined, suitable junction boxes shall be used, or the joints shall be soldered and the insulation, armoring, or lead covering replaced in at least as safe a condition as it was originally.

Power wires and cables in shafts: All power wires and cables in hoisting shafts or manway compartments shall be highly insulated and substantially fixed in position.

Cables and wires, unless provided with metallic coverings shall not be fixed to walls or timbers by means of insulated fastenings.

Trailing cables: Trailing cables for portable machines shall be especially flexible, heavily insulated and protected with extra stout braiding, hose pipes or other equally effective covering.

Each trailing cable in use shall be daily examined by the machine operator, for abrasions and other defects, and he shall also be required to carefully observe the trailing cable while in use, and shall at once report any defect to the person in charge of electrical equipment.

In gaseous portions of a mine a fixed terminal box shall be provided at the points where trailing cables are attached to the power supply. This terminal box shall be flameproof and shall contain a switch and fuse on each pole of the circuit. The switch shall be so arranged that it can be operated only from without the box, when the latter is completely closed, and the switch shall also be so constructed that the trailing cables cannot be attached or removed when the switch is closed. [1917 c 36 § 152; RRS § 8787. Formerly RCW 78.36.680.]

78.40.567 Switches, fuses and circuit breakers—
Operation and capacity. Switches, fuses and circuit breakers: Operation and capacity: Fuses and automatic circuit breakers shall be so constructed as effectually to interrupt the current on short circuit, or when the current through them exceeds a predetermined value.

Circuit breakers shall be adjusted to trip at from fifty percent to one hundred and fifty percent of their normal rated capacity, and provided with an indicator which shall show at what current the circuit breaker is set to trip.

Fuses shall be stamped or marked, or shall have a label attached indicating the maximum current which they are intended to carry. Fuses shall only be adjusted or replaced by a competent person authorized by the mine foreman.

Feeder circuit breakers: Circuit breakers used to protect feeder circuits shall be set to trip when the current exceeds by more than fifty percent the current carrying capacity of the feeder. In case the feeder is subjected to overloads sufficient to trip the circuit breaker, but of short duration, the circuit breaker may be equipped with a device which shall prevent its acting unless the overload persists for a longer period than ten seconds.

Bases: All switches, circuit breakers and fuses shall have incombustible bases.

Switches: All points at which a circuit, other than a signal circuit, has to be made or broken, shall be provided with proper switches. The use of hooks or other makeshifts is prohibited, except that connection for gathering locomotives, or locomotives and machines used in driving headings or rooms, may be made to the trolley by means of suitable hooks; switches shall be so installed that they cannot be closed by gravity. In any gaseous portions of a mine switches, circuit breakers or fuses

shall not be of the open type, but must be enclosed in explosion proof castings, or break under oil. [1917 c 36 § 153; RRS § 8788. Formerly RCW 78.36.690.]

78.40.570 Motors. Every stationary motor underground, together with its starting resistance, shall be protected by a fuse or circuit breaking device on at least one pole for direct current; and all poles for alternating current motors, and by switches arranged to entirely cut off the power from the motor. The above devices shall be installed in a convenient position near the motor.

Motors in coal mines: In any coal mine all motors, unless placed in such rooms as are separately ventilated with intake air, shall have all their current carrying parts, also their starters, terminals and connections, completely closed in explosion proof inclosures made of noninflammable materials. These inclosures shall not be opened except by an authorized person, and then only when the motor is switched off. The power shall not be switched on while the inclosures are open.

Mechanization: In any coal mine, all electrical equipment shall be of permissible type approved by the U.S. bureau of mines, unless used strictly in pure intake air. Inby last open cross cut is not to be considered as pure intake air. (1) Frequent inspections must be made. All electrical parts including trailing cables and wiring must be kept in a safe condition. A permissible junction box must be used in connecting the power circuit, unless the connections are made in pure intake air. (2) All bolts, nuts, screws, and other means of fastenings must be in place, properly tightened and secured. The maximum clearance shall not exceed .004 of an inch on all flange fits. (3) Inspections, repairs, or renewals of electrical parts must not be made unless the current is disconnected from the power circuit. The power must not be turned on until all parts are properly assembled. (4) Spliced cables must not be used unless the splices are properly made and vulcanized. (5) The frame of all electrical equipment must be connected to an adequate ground. The power wires must not be used for grounding. (6) The power shall not be turned on any piece of electrical equipment until a test for explosive gas has been made, unless said equipment is operated in intake air. (7) A test for gas must be made before starting the mining machine or electric drill and also a test for gas must be made at least every ten minutes while the machine or drill is in operation. (8) Water must be used on the cutter bar of mining machines while in operation in dusty conditions. (9) It is positively forbidden to use mining machines or electrical drills unless they are in good condition. (10) Hand drills shall not be operated on a higher potential than low voltage.

The person in charge of a coal cutter or drilling machine shall not leave the machine while it is working, and shall, before leaving the working place, see that the current is cut off from the trailing cables.

In any portion of a mine if any electric sparking or arc be produced outside of a coal cutting or other portable motor, or by the cable or rails, the machine shall be

stopped and not worked again until the defect is repaired, and the occurrence shall be reported to an official of the mine. [1947 c 166 § 5; 1943 c 211 § 10; 1933 c 137 § 1; 1917 c 36 § 154; Rem. Supp. 1947 § 8789. Formerly RCW 78.36.700 and 78.36.710.]

78.40.573 Electric locomotives. Electric locomotives: Trolley system: Electric haulage by locomotives operated by a trolley wire is not permissible in any gaseous portions of a mine, except upon the intake air.

In no case shall the potential used in the trolley system be higher than medium voltage. In mines opened after the passage of this chapter, or mines that are now operating where electricity is not used, when the power is not taken from a station now operating at a mine now operating, the potential shall not be higher than low voltage.

Storage battery system: Storage battery locomotives shall be used in gaseous mines only when the boxes containing the cells and all electrical parts are enclosed in flameproof casings. [1917 c 36 § 155; RRS § 8790. Formerly RCW 78.36.720.]

78.40.576 Incandescent lamps. Incandescent lamps: In all mines the sockets of fixed incandescent lamps shall be of the so called "weather-proof" type, the exterior of which shall be entirely nonmetallic. Flexible lamp cord connections are prohibited.

Incandescent lamps shall not be used in gaseous mines, except under the conditions where trolley locomotives are allowable. [1917 c 36 § 156; RRS § 8791. Formerly RCW 78.36.730.]

78.40.579 Shot firing by electricity. Shot firing by electricity: Shot firing circuits: Electricity from any grounded circuit shall not be used for firing shots.

When shot firing cables or wires in the vicinity of power or lighting conductors, special precaution shall be taken to prevent the shot firing cables or wires from coming in contact with the light, power or any other circuits.

Shot firers: Only competent persons who have been properly instructed and duly authorized by the mine foreman shall be allowed to fire shots electrically in any mine.

Electric detonators: All electric detonators and leads thereto shall be suitable for the conditions under which the blasting is carried on, and shall be of a type approved by the testing station of the federal bureau of mines. Detonators shall be kept in a dry place and never stored with any other explosive.

Portable firing machines and batteries: Portable shot firing machines, sometimes called generators, shall be enclosed in a tightly constructed case when employed in any portion of the mine. All contacts, when made or broken, shall be within the case except that the binding posts for making connections to the firing leads may be outside.

No firing machine or battery shall be connected to the shot firing leads until all other steps preparatory to the firing of a shot have been completed, and all persons

have moved to a place of safety, and no person other than the shot firer shall make such connection.

Disconnecting of leads: Immediately after the firing of a shot, the firing leads shall be disconnected from the supply or source of electricity, and no person shall approach a shot which has failed to explode until the firing leads have been so disconnected by the shot firer from the device and an interval of five minutes has elapsed since the last attempt to fire the shot.

Special systems: The use of special electrical shot firing systems, or equipment not covered by the foregoing, shall receive the approval of the testing station of the federal bureau of mines. [1917 c 36 § 157; RRS § 8792. Formerly RCW 78.38.360.]

78.40.581 Electric signalings. Electric signalings: Precautions: All proper precautions shall be taken to prevent electric signal and telephone wires from coming into contact with the other electric conductors, whether insulated or not.

Character of equipment: Bells, wires, insulators, contact-makers, and other apparatus used in connection with electric signaling underground, shall be of suitable design, of substantial and reliable construction, and erected in such a manner as to reduce the liability of failure or false signals to a minimum.

Maximum potential: In any gaseous portion of a mine, the potential used for signal purposes shall not exceed twenty-four volts, and bare wires shall not be used for signal circuits except in haulage roads. [1917 c 36 § 158; RRS § 8793. Formerly RCW 78.36.740.]

ARTICLE XV HOURS OF LABOR

78.40.585 Eight hour day—Penalty for violation by employer. It shall be unlawful for any person, firm or corporation operating any coal mine within the state of Washington, to cause any employee to remain at his place of work where the same is situated underground, for more than eight hours, exclusive of one-half hour for lunch, in any one calendar day of twenty-four hours. Any person, firm or corporation, or agent of any person, firm or corporation, violating the provisions of this section, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars nor more than one hundred dollars for each offense. [1917 c 36 § 159; RRS § 8794. Prior: 1909 c 220 § 1. Formerly RCW 78.34.010.]

78.40.588 Eight hour day—Penalty for violation by employee. It shall be unlawful for any person in the employ of any person, firm or corporation operating any coal mine within the state of Washington, to wilfully remain at or in his working place, where the same shall be underground, to exceed eight hours, exclusive of one-half hour for lunch, in any one calendar day of twenty-four hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five dollars nor more than twenty dollars for each offense.

[1917 c 36 § 160; RRS § 8795. Formerly RCW 78.34.020.]

78.40.591 Eight hour day—Exceptions to eight hour day. The provisions of RCW 78.40.585 and 78.40.588 shall not apply to, or prohibit engineers, rope riders, motormen, cagers or others necessarily employed in transporting men in and out of the mine.

Provided, however, That all persons so employed shall not work more than ten hours in any one calendar day: *And, provided further,* That this chapter shall not be construed to prohibit extra hours of employment underground necessitated by a weekly change of shift, or where rendered necessary by reason of making unavoidable repairs, or for the protection of human life. [1917 c 36 § 161; RRS § 8796. Formerly RCW 78.34.030.]

78.40.594 Eight hour day—Enforcement. It shall be the duty of the mine inspector to enforce the provisions of this article. [1917 c 36 § 162; RRS § 8797. Formerly RCW 78.32.030, part.]

ARTICLE XVI GENERAL RULES

78.40.600 Oil and grease in mines—Use, storage. It shall be unlawful to oil or grease any cars inside of any mine, unless the place where said oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point. Not more than one barrel of lubricating oil shall be permitted in any mine at one time, and it shall be kept in a fireproof building, cut out of solid rock, or made of masonry or concrete of sufficient thickness to insure safety in case of fire. [1917 c 36 § 163; RRS § 8798. Formerly RCW 78.34.760.]

78.40.603 Explosive oil in mines, when—Storage of motor oil. No explosive oil shall be taken into or used in any mine for lighting purposes, except when used in safety lamps. Oil used for motor purposes shall be contained in metal tanks not to exceed ten gallons, and if stored shall be put in a fireproof apartment, as provided in RCW 78.40.600. [1917 c 36 § 164; RRS § 8799. Formerly RCW 78.34.770.]

78.40.606 Employment of persons under eighteen, when—Penalty. No person under eighteen years of age shall be employed or permitted to be in any mine for the purpose of employment therein. No person under the age of sixteen years shall be employed or permitted to be in or about the surface workings of any mine for the purpose of employment: *Provided,* That this prohibition shall not affect the employment of boys or girls for clerical or messenger duty about the surface workings as permitted under the state and federal laws.

When an employer is in doubt as to the age of any person applying for employment in or about the mine, the employer shall demand and receive proof of the age of such person by certificate from the parents or guardian of such person before such person shall be employed. Said certificate shall consist of an affidavit, sworn and

subscribed to before a district judge or notary public, that the person making such affidavit, is of the prescribed age for employment.

Any person swearing falsely in regard to the age of a person shall be guilty of perjury and shall be punished as provided in the statutes of the state. [1987 c 202 § 236; 1973 1st ex.s. c 154 § 114; 1943 c 211 § 11; 1917 c 36 § 165; Rem. Supp. 1943 § 8800. Prior: 1909 c 117 § 4; 1891 c 81 § 12; 1887 c 21 § 6, part; 1885 p 132 § 24, part. Formerly RCW 78.34.040.]

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

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

78.40.609 Passing danger signals prohibited. It shall be unlawful for any person except the mine officials, and in case of necessity such other person as may be designated by them, to pass beyond any danger signal, or to enter any place which has been reported dangerous on bulletin board, unless he be accompanied by a mine official. However, this does not apply to regular danger signals permanently posted above the mine. [1917 c 36 § 166; RRS § 8801. Formerly RCW 78.34.050.]

78.40.612 Miners to check in and out. No mine employee shall enter or leave a mine without indicating the fact of entering or leaving said mine by some suitable checking system provided by and under the control of the operator. [1917 c 36 § 167; RRS § 8802. Formerly RCW 78.34.060, part.]

78.40.615 Entry by unauthorized personnel. No unauthorized person shall enter the mine without permission from the superintendent or mine foreman. [1917 c 36 § 168; RRS § 8803. Formerly RCW 78.34.060, part.]

78.40.618 Intoxicants prohibited—Penalty. No person shall go into or around a mine, the buildings or machinery connected therewith, while under the influence of intoxicants. No person shall use, carry, or have in his possession at, in, or around a mine, the buildings or the machinery connected therewith, any intoxicants. Any violation of this section will be a misdemeanor under this chapter. [1917 c 36 § 169; RRS § 8804. Formerly RCW 78.34.070.]

78.40.621 Mining pillars alone prohibited. No person shall be employed to mine out pillars unless in company with one or more miners. [1917 c 36 § 170; RRS § 8805. Formerly RCW 78.34.080.]

78.40.624 Workman to examine working place. Every workman employed in the mine shall examine his working place before commencing work, and after any stoppage of work during the shift he shall repeat such examination. [1917 c 36 § 171; RRS § 8806.]

Miner to examine safety of working place—Safety rules: RCW 78.40.732.

78.40.627 Posting and advising new men of rules. Every workman, when first employed, shall have his attention directed by the mine foreman, or his assistant, to the general and special rules contained in this chapter. Said rules shall be posted at a conspicuous place at or near the main entrance to the mine. [1917 c 36 § 172; RRS § 8807. Prior: 1891 c 81 § 20, part; 1885 p 232 § 24, part. Formerly RCW 78.34.090.]

Copies of laws and rules for employees: RCW 78.40.711.

78.40.630 Duty to inform foreman of dangers. Employees shall notify the mine foreman, or the assistant mine foreman, of the unsafe condition of any working place, hauling roads or traveling ways, or of damage to doors, brattices or stoppings, or of obstructions in the air passages, when said conditions are known to them. [1917 c 36 § 173; RRS § 8808. Formerly RCW 78.34.100.]

78.40.633 Foot travel on slopes, roads, prohibited. No person shall be allowed to travel on foot to and from his work on any hoisting slope, inclined plane, or locomotive road, unless no other roads are provided for that purpose, and then only at such times as permitted by the mine foreman. [1917 c 36 § 174; RRS § 8809. Formerly RCW 78.34.110.]

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.636 Riding cages and cars in shafts and slopes prohibited. No person shall ride upon or against any loaded car or cage in any shaft or slope in any mine. No person other than the trip rider shall be permitted to ride on empty trips on any slope, or inclined plane, except as provided for in other sections of this chapter. [1917 c 36 § 175; RRS § 8810. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 24, part. Formerly RCW 78.34.130.]

Men and materials not to be hoisted together: RCW 78.40.284.

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.639 Riding full cars prohibited—Exception. No person other than the driver or trip rider, shall be allowed to ride on the full car, except mine officials and repair men. [1917 c 36 § 176; RRS § 8811. Formerly RCW 78.34.120, part.]

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.642 Destroying signs, etc.—Prosecution. Any person who shall deface, pull down, or destroy any notice board, danger signal, general or special rules, record books or mining laws, shall be prosecuted by the mine inspector on notice given by the superintendent, or obtained from other sources, as provided for in RCW 78.40.765. [1917 c 36 § 177; RRS § 8812. Formerly RCW 78.34.790.]

78.40.645 Tampering with equipment prohibited. All persons are forbidden to meddle or tamper in any way with any electric or signal wires, or any other equipment in or about the mine. [1917 c 36 § 178; RRS § 8813. Formerly RCW 78.36.750.]

78.40.648 Quantity of explosives allowed in mine. No powder or high explosive shall be taken into the mine at any one time by any person in greater quantities than is required for use in one shift. [1917 c 36 § 179; RRS § 8814.]

High explosives: RCW 78.40.476.

78.40.651 Limitations on storage and handling of explosives. No explosive shall be stored in any tippie or weighing office, and no naked lights shall be used while the attendant is weighing and giving out explosives. [1917 c 36 § 180; RRS § 8815. Formerly RCW 78.38.250.]

Storage of explosives—Issuance to workmen—Penalty: RCW 78.40.488.

Use of lamps and lighted pipes near explosives—Opening receptacles: RCW 78.40.473.

78.40.654 Crowding on and off cars prohibited—Penalty. Any person crowding or pushing to get on or off the cage or car shall be deemed guilty of a misdemeanor, and the mine inspector shall prosecute him in accordance with RCW 78.40.765, when the matter is reported to him by the superintendent. [1917 c 36 § 181; RRS § 8816. Formerly RCW 78.34.140.]

78.40.657 Prerequisite to entrusting lamps to workmen. No safety lamp shall be entrusted to any person for use in a mine, until said person has given satisfactory evidence to the foreman that he understands the proper use thereof, and the danger of tampering with the same. [1917 c 36 § 182; RRS § 8817. Formerly RCW 78.36.060.]

Safety lamps: RCW 78.40.500 through 78.40.512.

78.40.660 Unauthorized possession of keys to safety lamps—Prosecution. No one, except a person duly authorized by this chapter, shall have in his possession a key or other instrument for the purpose of unlocking any safety lamp in any mine where locked safety lamps are used. Other persons than those duly authorized by this chapter, having keys or other instruments for the opening of safety lamps, shall be prosecuted by the state mine inspector. [1917 c 36 § 183; RRS § 8818. Formerly RCW 78.36.070.]

78.40.663 Brushing or blowing gas prohibited. Any accumulation of explosive gas in a mine shall not be removed by brushing, or by blowing out by the use of compressed air. [1943 c 211 § 12; 1917 c 36 § 184; Rem. Supp. 1943 § 8819. Formerly RCW 78.34.740.]

78.40.666 Action when gas ignited by blast—Leaving gas blowers burning prohibited—Prosecution. When gas is ignited by a blast, or otherwise, the person having charge of the place where the said gas is ignited, shall immediately extinguish it, if possible, and if unable to do so, he shall immediately notify the mine foreman, or the assistant mine foreman, of the fact. Miners must see that no gas blowers are left burning upon leaving

their working places. It shall be the duty of the superintendent to notify the mine inspector of any violation of this rule, and the inspector shall then prosecute as provided for in RCW 78.40.765. [1917 c 36 § 185; RRS § 8820. Formerly RCW 78.34.750.]

78.40.669 Warning by shot firer. When a shot firer is about to fire a blast where the miners are not present, he shall be careful to notify all persons who may be endangered thereby, and shall give sufficient alarm so that any person approaching may be warned of the danger. [1917 c 36 § 186; RRS § 8821. Formerly RCW 78.38.290.]

78.40.672 Warning when driving crosscuts. In driving crosscuts through pillars, before firing a blast, the miner must notify in person the workmen in the place toward which he is driving, so that they may find a place of safety. He shall also guard the passages on either side of his place at every shot, so that no person may come unawares upon it. [1917 c 36 § 187; RRS § 8822. Formerly RCW 78.38.300.]

78.40.675 Precautions in handling explosives. Whenever a miner or shot firer shall open a box containing powder or other explosives, or while in any manner handling the same, he shall first place his lamp, if open, not less than five feet from such explosive and in such a position that the air current cannot convey sparks to the explosive, and he shall not smoke while handling explosives. [1917 c 36 § 188; RRS § 8823. Formerly RCW 78.38.220, part.]

Use of lamps and lighted pipes near explosives—Opening receptacles: RCW 78.40.473.

78.40.678 Types of tamping bars for blasting enumerated. In charging and tamping a hole for blasting, no person shall use any iron or steel needle. The tamping bar for high explosives shall be made of wood. For black powder iron tamping bars must be tipped with copper at least five inches in length. [1917 c 36 § 189; RRS § 8824. Prior: 1887 c 21 § 19, part.]

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

78.40.681 Blasting holes. No explosive shall be forcibly pressed into a hole that is of insufficient size, and when a hole has been charged the explosive shall not be taken out, and no hole shall be bored for blasting at a distance of less than twelve inches from any hole where the charge has misfired, and no hole for blasting shall be drilled more than six feet deep. [1917 c 36 § 190; RRS § 8825. Formerly RCW 78.38.370.]

Depth of hole: RCW 78.40.485.

78.40.684 Incombustible tamping material in gaseous or dusty mines—Penalty. In gaseous or dusty mines, shot firers or other persons charging holes for blasting, shall use incombustible material for tamping. All holes before being fired shall be solidly tamped the full length of the hole. Any person who violates this rule shall be

guilty of a misdemeanor. [1917 c 36 § 191; RRS § 8826. Formerly RCW 78.38.350.]

78.40.687 Abandoned shafts to be fenced or filled. Every abandoned slope, shaft, airhole or drift, shall be fenced or filled in such a manner as to afford proper and continuous protection to all persons and stock endangered thereby. [1943 c 211 § 13; 1917 c 36 § 192; Rem. Supp. 1943 § 8827. Formerly RCW 78.34.700.]

78.40.690 Entering abandoned portions prohibited—Prosecution. No person shall go into an old or abandoned portion of any mine, or into any other place that is not in actual course of working, without permission from a mine official, and no person shall travel to and from his work except by the traveling way assigned for that purpose. It shall be the duty of the mine inspector to prosecute all persons who violate this rule, in accordance with RCW 78.40.765. [1917 c 36 § 193; RRS § 8828. Formerly RCW 78.34.150.]

78.40.693 Interference with airway or roads prohibited. Workmen and all other persons are expressly forbidden to commit any nuisance, or throw into, deposit or leave coal or dirt, stones or other rubbish in the airway or road to interfere with, pollute or hinder the air passing into and through the mine. [1917 c 36 § 194; RRS § 8829. Formerly RCW 78.34.160.]

78.40.696 Signal code to be posted. In all shafts and slopes where persons, coal and other materials are hoisted by machinery, the code of signals shall be posted. [1917 c 36 § 195; RRS § 8830. Formerly RCW 78.36.810.]

78.40.699 Smokers' articles prohibited. No person shall carry any matches, pipes or other smokers' articles into a mine, or portion of a mine worked with safety lamps, nor shall he have any of said articles in his possession while in such a mine. [1917 c 36 § 196; RRS § 8831. Formerly RCW 78.34.170.]

78.40.702 Prompt treatment of injured. If any person shall receive any injury in or about the mine requiring surgical or medical treatment, and same is reported to the mine foreman, he shall see that said injured person receives such treatment immediately. [1917 c 36 § 197; RRS § 8832. Formerly RCW 78.34.470.]

78.40.705 Contravening rules—Penalty. Every person who contravenes or does not comply with any of the special or general rules in this chapter shall be deemed guilty of a misdemeanor. [1917 c 36 § 198; RRS § 8833. Formerly RCW 78.32.030, part.]

78.40.708 Dead line set in shafts or slopes—Penalty. At the foot of any shaft or slope, or at any intermediate lift from which men and coal are regularly hoisted, the operator or superintendent or foreman shall designate a dead line beyond which men shall not pass in order to be hoisted out of the shaft or slope, until they are notified by the cager or foreman in charge of said

place. Failure to recognize this rule shall be a misdemeanor under this chapter. [1917 c 36 § 199; RRS § 8834. Formerly RCW 78.38.080.]

78.40.711 Copies of laws and rules for employees. Copies of these rules shall be printed in English, by the operator, and each workman in and around the mine shall procure a copy. If he cannot read the English language, he must at his own expense, procure an interpreter to correctly interpret the rules to him. The workman will pay the operator twenty-five cents per copy for the rules, and if he returns the same to the operator in legible condition, the amount so paid by him shall be returned. [1919 c 201 § 6; 1917 c 36 § 200; RRS § 8835. Prior: 1891 c 81 § 20, part; 1885 p 232 § 24, part. Formerly RCW 78.34.230.]

Posting and advising new men of rules: RCW 78.40.627.

78.40.714 Meddling with identifying checks—Penalty. It shall be unlawful to change, exchange, substitute, alter or move any number or check or other device or sign used to indicate or identify the person or persons to whom credit or pay is due for the mining or loading of coal in any car or appliance containing the same; and it shall be unlawful for any person to place any number, check, device or sign upon any car or other appliance loaded by any other person in or about the mine. Any violation of this provision shall be deemed a misdemeanor under this chapter. [1917 c 36 § 201; RRS § 8836. Formerly RCW 78.32.070.]

78.40.717 Prosecutions by state mine inspector. The state mine inspector shall prosecute all violators of the mining law. [1917 c 36 § 202; RRS § 8837. Formerly RCW 78.32.030, part.]

78.40.720 Cleared space around air shafts, escape-ment ways. All surface timber, brush and other inflammable material must be kept cleared for a distance of one hundred feet on all sides of the air shafts and escape-ment ways: *Provided*, That this regulation shall not apply to a reasonable amount of cut timber kept on hand for immediate use underground. [1917 c 36 § 203; RRS § 8838. Formerly RCW 78.38.010.]

Violation, penalty: RCW 78.40.723.

78.40.723 Scales—Record of weights—Weighers and check weighers, oaths, duties—Violation, penalty. (1) The operator of every coal mine where the miners are paid by the weight of their output, shall provide at such mine suitable and accurate scales for the weighing of such coal, and a correct record shall be kept of all coal so weighed, and each day's record shall be posted where it is open at all hours to the inspection of miners. Sufficient weights shall be furnished by the operator for the purpose of testing the accuracy of said scales: *Provided, however*, That where a check weigher is employed the operator shall not be required to post each day's record.

(2) The miners employed by or engaged in working at any coal mine in this state shall have the privilege, if

they desire, of employing at their expense a check weigher, whose compensation shall be deducted by the mine operator before paying the wages due the miner, and who shall have like rights, powers and privileges in the weighing of coal as the regular weigher, and be subject to the same oath and penalties as the regular weigher. Said oath or affirmation shall be conspicuously posted in the weigh office.

(3) The weigher and check weigher employed at any mine shall subscribe an oath or affirmation before a district judge, or other officer authorized to administer oaths, in form as follows, to wit: (Date) _____ I, _____ depose and say that I will do justice, as weigher, between the employer and employee, and weigh correctly the output of coal from the mine or mines, and keep an accurate record thereof, posting a daily bulletin of such weights for the examination of the employee.

(Sign here) _____

Sworn to and subscribed before me, a _____ on the day and dates above written.

(4) Any weigher of coal, check weigher, or any person so employed, who shall knowingly violate any of the provisions of this section or RCW 78.40.720, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a period not to exceed thirty days, or by both such fine and imprisonment, proceedings to be instituted in any court having jurisdiction therein. [1987 c 202 § 237; 1935 c 6 § 1; 1917 c 36 § 204; RRS § 8839. Prior: 1891 c 161 § 2. Formerly RCW 78.32.050 and 78.32.060.]

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

78.40.726 Returning to missed shots. No person shall return to a missed shot, if lighted with a squib, until twenty minutes have elapsed from the time of lighting same, or, if lighted with a fuse, until eight hours have elapsed; and no person shall return to a missed shot when the firing is done by electricity unless the wires are disconnected from the battery. [1917 c 36 § 205; RRS § 8840. Formerly RCW 78.38.320.]

Shot firing by electricity: RCW 78.40.579.

78.40.729 Bribery to procure employment prohibited—Penalty. Any mine superintendent, mine foreman, or other person or persons who shall receive or solicit any sum of money or other valuable consideration, from any person for the purpose of continuing in his or their employ, or for the purpose of procuring employment, shall be guilty of a misdemeanor. Any person offering any mine superintendent, or mine foreman, any sum of money or any other valuable consideration as a bribe for the purpose of obtaining employment or retaining employment, shall be guilty of a misdemeanor, and in either case of superintendent, mine foreman, or other person, upon conviction they shall be subject to a fine of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such

fine and imprisonment, proceedings to be instituted in any court having jurisdiction thereof. [1917 c 36 § 206; RRS § 8841. Formerly RCW 78.34.210.]

78.40.732 Miner to examine safety of working place—Safety rules. The miner shall examine his working place before beginning work, and take down all dangerous slate, or otherwise make it safe by properly timbering it, before commencing to mine or load coal. He shall examine his place to see whether the fire boss has left the date marks indicating his examination thereof, and if said marks cannot be found it shall be the duty of the miner to notify the mine foreman, or the assistant mine foreman, of the fact immediately. The miner shall at all times be careful to keep his working place in a safe condition.

Should he at any time find his place becoming dangerous from gas or from roof or from any unusual condition that may arise, he shall at once cease working and inform the mine foreman, or the assistant mine foreman, of said danger, but before leaving his place he shall put some plain warning across the entrance thereto to warn others against entering into danger.

After each blast he shall exercise care in examining the roof and coal, and shall secure them safely before beginning work.

He shall order all props, cap pieces, and all other timbers necessary at least one day in advance of needing them, or as provided for in the rules of the mine. If he fails to receive said timbers and finds his place unsafe, he shall vacate it until the necessary timbers are supplied.

The management of any mine may submit to the mine inspector, for his approval, uniform rules for timbering at mines where conditions may be favorable for same. If approved by the mine inspector, they will become a part of the rules of said mine.

In all working places where it is necessary to temporarily remove posts, substitute posting shall be done when necessary for safety and such posts as are removed must be replaced as soon as possible by permanent timbers.

Under no condition shall the miner use coal dust or other combustible material for tamping in any gaseous or dusty mines.

When places are liable to generate sudden outbursts of explosive gas, no miner shall be allowed to charge or fire shorts [shots] except under the supervision and with the consent of the mine foreman, or the assistant mine foreman, or some other competent person designated by the mine foreman for that purpose.

The miner shall remain during working hours in the place assigned to him, and he shall not leave his working place without the consent of the mine foreman, assistant mine foreman, or fire boss, unless called upon to assist others, or in case of need. He shall not wander about the hauling roads or enter abandoned or idle workings. [1943 c 211 § 14; 1917 c 36 § 207; Rem. Supp. 1943 § 8842. Formerly RCW 78.34.180, 78.34.190 and 78.38.340.]

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

Workman to examine working place: RCW 78.40.624.

Workmen firing shots: RCW 78.40.441, 78.40.444, 78.40.579, 78.40.669 and 78.40.726.

78.40.735 Duties of driver. Duties of driver: When a driver has occasion to leave his trip, he must be careful to see that it is left, when possible, in a safe place secure from cars and other dangers, and where it will not endanger the drivers of other trips or other persons.

He must take care while making his trip down grade to have the brakes or sprags so adjusted that he can keep the cars under control and prevent them from running over himself or others.

He shall not leave any cars standing where they may materially obstruct the ventilating current, except in case of accident, which he shall promptly report to the mine foreman, or assistant mine foreman.

He shall not allow any person to ride on loaded mine cars. He shall not allow any person to drive his horses or mules in his stead, unless authorized by a mine official. When it is his duty to open a door for the purpose of passing his trip through he shall see that the door is immediately closed thereafter. [1917 c 36 § 208; RRS § 8843. Formerly RCW 78.32.800.]

78.40.738 Duties of a trip rider. Duties of a trip rider: The trip rider shall exercise care in seeing that all hitchings are safe for use and that all the trip is coupled before starting, and should he at any time see any material defect in the rope, link or chain, he shall immediately remedy said defect, or, if he is unable to do so, he shall detain the trip and report the matter to the mine foreman or the assistant mine foreman. He shall not allow any person to ride on the loaded or empty trip, except as provided in RCW 78.40.639. [1917 c 36 § 209; RRS § 8844. Formerly RCW 78.32.810.]

78.40.741 Duties of hoisting engineers. Duties of hoisting engineers: It shall be the duty of the engineer, who shall be a temperate competent person, to keep a careful watch over his engine and all machinery under his charge. He shall make himself acquainted with the signal codes provided for in this chapter, and by the special rules of the mine.

He shall not allow any unauthorized person to enter the engine house, nor shall he allow any person to handle or run the engine without the permission of the superintendent.

When workmen are being lowered or raised he shall take special precautions to keep the engine well under control. [1917 c 36 § 210; RRS § 8845. Formerly RCW 78.32.820.]

78.40.744 Duties of motorman and locomotive engineer. Duties of motorman and locomotive engineer: The motorman or locomotive engineer shall keep a sharp lookout ahead, and sound the whistle or alarm bell frequently when coming near the parting switches or landings, and shall not exceed the limit allowed by the mine

foreman. He shall see that the motors, cables and controlling parts are kept clean and in a safe operating condition, and that the headlight is burning properly when the locomotive is in motion. He shall not allow any person, except his attendant, or mine officials, to ride on the locomotive or motor. [1917 c 36 § 211; RRS § 8846. Formerly RCW 78.32.830.]

78.40.747 Duties of firemen. Duties of firemen: Every fireman in charge of a boiler or boilers for the generation of steam shall keep a careful watch over same. He shall see that the steam pressure does not at any time exceed the limit allowed by the superintendent or master mechanic; he shall frequently try the safety valves, and shall not increase the weight on the same. He shall maintain a proper height of water in each boiler, and if anything should happen to prevent this he shall report it without delay to the superintendent or master mechanic, or other person designated by the superintendent, and take such other action as may under the circumstances be best for the protection of life and preservation of property. [1917 c 36 § 212; RRS § 8847. Formerly RCW 78.32.840.]

78.40.750 Duties of fan operator. The person in charge of the ventilating fan at a mine shall keep it running at such speed as the mine foreman shall direct in writing. He shall report promptly to the mine foreman, or assistant mine foreman, in case of accident to boiler or fan machinery. If only ordinary repairs to the fan or machinery become necessary, he shall await the instructions of the mine foreman or assistant mine foreman before stopping the fan. Should it become impossible to run the fan, or become necessary to stop it to prevent its destruction, he shall at once notify the superintendent or mine foreman, who shall give immediate warning to the persons in the mine. [1917 c 36 § 213; RRS § 8848. Prior: 1897 c 45 § 9. Formerly RCW 78.32.850.]

78.40.753 Duties of hooker-on. The hooker-on at the bottom of any slope shall be over eighteen years of age, and he shall be careful to see that the cars are properly coupled to a rope or chain, and to each other, and the safety device is properly attached to man trips, before signaling the engineer. He shall personally attend to the signals, and see that the provisions of this chapter in respect to hoisting and lowering persons in shafts or slopes are complied with. [1917 c 36 § 214; RRS § 8849. Formerly RCW 78.32.860.]

Hoists and hoisting: RCW 78.40.270 through 78.40.296.

78.40.756 Duties of cager. Duties of cager: The cager at the bottom of any shaft shall be over eighteen years of age. He shall not attempt to withdraw the car until the cage comes to a rest, and when putting the full car on the cage, he must be careful to see that the springs or catches are properly adjusted to keep the car in place before signaling the engineer. He shall personally attend the signals and see that the provisions of this chapter in respect to hoisting and lowering persons in

shafts or slopes are complied with. [1917 c 36 § 215; RRS § 8850. Formerly RCW 78.32.870.]

Hoists and hoisting: RCW 78.40.270 through 78.40.296.

78.40.759 Duties of topmen—Enforcement of non-conflicting rules and regulations. (1) The topman of a shaft shall not allow any tools to be placed on the same cage with persons, or on either cage when persons are being lowered into the mine, except for the purpose of repairing the shaft or the machinery therein. The men shall place their tools in cars provided for that purpose, which cars shall be lowered before or after the men have been lowered. He shall also see that no driver or other person descends the shaft with any horse or mule, unless the said horse or mule is secured in a suitable box or safely penned, and only the driver in charge of said horse or mule shall accompany it in any cage. The topman of a shaft shall see that the springs or keeps for the cage to rest upon are kept in good working order, and when taking the full car off he must be careful that no coal or other material is allowed to fall down the shaft.

(2) The topman of a slope or inclined plane shall see that the safety device is closed at all times, except when cars or trips are passing, and in no case shall said safety device be withdrawn until the cars are coupled to the rope or chain and the proper signal given. He shall carefully inspect each day the rope and chain used for hoisting or lowering men or coal, and shall promptly report to the superintendent any defect discovered, and shall use care in attaching securely the cars to the rope. He shall ring the alarm bell in case of accident.

(3) It shall be the duty of all topmen to report to the superintendent any violation of RCW 78.40.675.

(4) Nothing herein shall be construed to prevent the owner or operator of a coal mine from enforcing any rules or regulations now in effect, or that may be later adopted, which do not conflict with the provisions of this chapter. [1917 c 36 § 216; RRS § 8851. Formerly RCW 78.32.880 and 78.38.220, part.]

ARTICLE XVII OFFENSES AND PENALTIES

78.40.765 Interference with appliances or employees—Penalty—General penalty. Any miner, workman, or other person, who shall knowingly injure any water gauge, barometer, air course or brattice, or shall obstruct or throw open any airway, or shall handle or disturb any part of the machinery of the hoisting engine, or open a door in the mine and not have the same closed again, whereby danger is produced either to the mine or to those that work therein, or who shall enter into any part of the mine against caution, or who shall interfere with or intimidate any engineer, fireman, or other employee in or about such mine in the discharge of his duties or the performance of his labor, or who shall disobey any order given in pursuance of this chapter, or violate any of the provisions established by this chapter, for which the penalty is not otherwise provided, and who shall do any act whereby the lives and health of persons working in the mine, or the security of the mine or mines

or the machinery thereof is endangered, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars nor less than fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. [1917 c 36 § 217; 1891 c 81 § 21; 1887 c 21 § 16; RRS § 8852. Formerly RCW 78.34.200.]

Bribery to procure employment prohibited—Penalty: RCW 78.40.729.

Contravening rules—Penalty: RCW 78.40.705.

Deadline set in shafts or slopes—Penalty: RCW 78.40.708.

Eight hour day

penalty for violation by employee: RCW 78.40.588.

penalty for violation by employer: RCW 78.40.585.

Employment of persons under eighteen, when—Penalty: RCW 78.40.606.

First aid kits—Penalties: RCW 78.40.462.

Incombustible tamping material in gaseous or dusty mines—Penalty: RCW 78.40.684.

Internal combustion engines prohibited—Penalty: RCW 78.40.357.

Intoxicants prohibited—Penalty: RCW 78.40.618.

Meddling with electrical system—Penalty: RCW 78.40.555.

Meddling with identifying checks—Penalty: RCW 78.40.714.

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

Operator's reports, penalty: RCW 78.40.375.

Safety lamps, penalty: RCW 78.40.509.

Scales—Record of weights—Weighers and check weighers, oaths, duties—Violation, penalty: RCW 78.40.723.

Storage of explosives—Issuance to workmen—Penalty: RCW 78.40.488.

Width of barrier pillars—Penalty: RCW 78.40.372.

ARTICLE XVIII CONSTRUCTION

78.40.770 General repealer. All acts or parts of acts relating to coal mining in the state of Washington, or to the mine inspector of the state of Washington, be, and the same are hereby repealed. [1917 c 36 § 218; RRS § 8853.]

78.40.771 Severability—1917 c 36. If it shall be adjudicated that any section or part of a section of this chapter shall be unconstitutional and invalid for any reason, an adjudication of invalidity of said section or part of a section shall not affect the validity of the chapter as a whole, or any part thereof. [1917 c 36 § 219; RRS § 8854.]

78.40.772 Effective date for certain compliance. Every operator of a mine affected by this chapter shall be given six months after this chapter takes effect to make any necessary changes or secure any materials or supplies to comply with the provisions of this chapter. [1917 c 36 § 220; RRS § 8855.]

78.40.773 What constitutes a coal mine—Inspection. No coal mine shall be considered a mine for the purpose of this chapter unless five men or more are employed underground on one shift, nor shall mines employing less than ten men be subject to the provisions of

this chapter, except that the inspector of mines shall have the right to enter any of the places where men are at work within such prospect, and if the conditions therein are dangerous to life, the inspector may, and it shall be his duty to stop work on such prospect until such dangerous place is rendered safe, or the same be placed in control of a certified mine foreman: *Provided*, That all such operators of prospects and places herein in this section referred to shall make reports to the state mine inspector as are required to be made by other mines and mine operators under the provisions of this chapter. [1917 c 36 § 221; RRS § 8856. Prior: 1897 c 45 § 6, part; 1873 p 28 § 21; Code 1881 § 2638. Formerly RCW 78.32.020.]

ARTICLE XIX SAFETY COMMITTEE

78.40.780 Safety committee—Members, officers, records, duties—Appeals to inspector. In every mine a general safety committee shall be selected, composed of the mine superintendent or manager of mines, one man selected by the employees or any association of employees in or around said mine, and a third member selected by these two.

The general safety committee shall elect one of the members to act as chairman and one to act as secretary. The duties of the chairman shall be to preside at all meetings of the general safety committee, enforce its rules and regulations and see that its business is conducted in a prompt and businesslike manner. The secretary shall keep an accurate written record of the proceedings of all meetings, conduct its correspondence and post notices of regular and special meetings and other matters pertaining to safety.

The duties of the general safety committee shall be to investigate all serious and fatal accidents; make bi-monthly examination of the mine, their findings and recommendations to be made in writing, one copy to be sent to the chief state mine inspector. They shall coordinate with the management in the work of supervision of bulletin board service, and the outline and conduct of safety educational activities, arrange the programs for all safety meetings, pass on all safety controversial matters referred to them by subsafety committees. They shall meet with all other safety committees as often as possible, but not less often than once each month, and discuss safety measures, violations of safety rules and practices, and take up any other safety subject that will tend to eliminate accidents and pass on all safety suggestions referred to them by any employer or employee.

Should there be any disagreement among the members of the general safety committee relating to any safety matter brought or referred to them for disposition, either side may appeal to the chief state mine inspector, who shall in this case pass on controversial safety matters. His decision will be final and binding on both parties.

The written records of the general safety committee shall be open for inspection at all times by the chief state mine inspector, or his deputies or any state official

connected with accident or safety work. [1927 c 306 § 12; RRS § 8856-1. Formerly RCW 78.34.400 and 78.34.410.]

78.40.783 Subsafety committee—Members, qualifications, duties. At mines employing more than twenty-five men there shall be a subsafety committee at each level or entry, consisting of a mine foreman, assistant mine foreman, or fire boss, and one employee selected by the men working on such level or entry.

The members of this committee shall have had six months' experience in this mine or at mines where similar conditions exist. Workmen serving on safety committee may be changed every two months.

Where workman finds dangerous conditions that he cannot correct himself, he shall report it to the official in charge of that section of the mine. If the condition is not corrected in a reasonable time he shall then call the other member of the safety committee to make an investigation. If the subsafety committee shall fail to agree they shall report to the general safety committee.

All level or entry safety committees shall attend and report at all meetings of the general safety committee.

The workmen's representative on the subsafety committee shall not visit or inspect any part of the mine except when accompanied by the other member of the subsafety committee. If for any reason either member of the committee fails to act on any complaint it shall be referred to the general safety committee. At all mines employing less than twenty-five men the general safety committee shall have general supervision over all safety matters. [1927 c 306 § 13; RRS § 8856-2. Formerly RCW 78.34.420.]

78.40.786 Outside committee—Members, duties. At each mine employing more than twenty-five men there shall be an outside committee consisting of the outside foreman, master mechanic and two employees selected by the men working on the outside. Workmen serving on outside safety committee may be changed every two months. Where workman finds dangerous or unsafe conditions that he cannot correct himself, he shall report it to the outside foreman. If the condition is not corrected in a reasonable time, he shall report it to one of the workmen's representatives on the safety committee, who shall then call the other members of the safety committee to make an investigation. If the outside safety committee shall fail to agree they shall report it to the general safety committee. The workmen's representatives shall not visit or inspect any part of the outside workings except when accompanied by the outside foreman or master mechanic. If for any reason any member of the committee fails to act upon any complaint called to his attention, it shall be referred to the general safety committees. It shall be understood that all safety committees shall confine themselves to safety measures and accident prevention alone, the sole purpose of their organization being to preserve the life and limb of workmen in and around the mines. [1927 c 306 § 14; RRS § 8856-3. Formerly RCW 78.34.430.]

78.40.789 Safety bulletin boards. It shall be the duty of the mine operators of each mine to establish and maintain a safety bulletin board service, to provide at least one standard bulletin board located in such place as to attract the attention of the greatest number of mine employees, and to post upon such board, all bulletins and such other matters as will be valuable in the educational development of the prevention of accidents.

The number of bulletin boards required and the frequency of displaying new bulletins, or shifting bulletins from board to board, shall be determined by the operator or by the operator and the chief state mine inspector, or by the chief state mine inspector.

Whenever a lesson of value to the mine is determined as the result of an investigation of an accident occurring within such mine, which will be of value in preventing the recurrence of future accidents of similar nature, the same can be given the greatest accident prevention value by being made the subject of a typewritten or other form of bulletin descriptive of the accident, giving the cause of, and recommendations covering measures adopted to prevent accidents of like or similar nature or cause.

The safety bulletin board shall be open to the services of bulletins on mine safety measures only; to the mine safety committee, the state mining board, chief state mine inspector and the employer's report of accidents occurring at the mine during the previous calendar month. [1927 c 306 § 15; RRS § 8856-4. Formerly RCW 78.34.600.]

78.40.791 Rule for loaders in certain mines—
Signs. At all mines using the gangway and counter system, a rule shall be enforced to compel the loaders to keep the coal in the chutes above the bulkhead, thereby preventing a short circuit of the air that may create a dangerous condition in some of the working places further inside.

Adequate signs approved by the chief state mine inspector shall be placed at intervals on the gangway calling attention to the foregoing danger. [1927 c 306 § 16; RRS § 8856-5. Formerly RCW 78.34.800.]

78.40.794 Workman to report violations of safety rules. Whenever any workman in or about any mine shall observe any violation of the safety rules and regulations governing the mine, or unsafe conditions or unsafe practice, it shall be his duty to report the same to a member of the safety committee. [1927 c 306 § 17; RRS § 8856-6. Formerly RCW 78.34.810.]

78.40.797 First aid—Education, treatment, records. There shall be developed at each mine a requirement of first aid education that will result in the practical and intensive education in first aid administration of a minimum of ten percent of the employment of said mine.

The operating company shall keep a record of all employees who have completed the course of required training in first aid, and a complete copy of such record shall be furnished the chief state mine inspector.

All employees shall be educated to report and receive first aid treatment of all injuries, no matter how trivial they shall be. This rule is made to obviate frequent infections that develop from wounds that are trivial in character. This first aid treatment of wounds of trivial character shall be in the hands of a trained first aid man, if more convenient than the mine surgeon, but the first aid attendant shall promptly refer any accident to the mine surgeon when he deems it of sufficiently severe character. [1927 c 306 § 18; RRS § 8856-7. Formerly RCW 78.34.440.]

Chapter 78.44 SURFACE MINING

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78.44.180	Confidentiality.
78.44.910	Previously mined land.
78.44.920	Effective date—1970 ex.s. c 64.
78.44.930	Severability—1970 ex.s. c 64.

78.44.010 Legislative finding. The legislature recognizes that the extraction of minerals by surface mining is a basic and essential activity making an important contribution to the economic well-being of the state and nation. At the same time, proper reclamation of surface mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of many types of surface mining operations precludes complete

restoration of the land to its original condition. However, the legislature finds that reclamation of surface mined lands as provided in this chapter will allow the mining of valuable minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land. [1970 ex.s. c 64 § 2.]

78.44.020 Purpose. The purpose of this chapter is to provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration. It is a further purpose of this chapter to provide a means of cooperation between private and governmental entities in carrying this chapter into effect. [1970 ex.s. c 64 § 3.]

78.44.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "Surface mining" shall mean all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and including the production of surface mining refuse. Surface mining shall not include on-site processing of minerals such as concrete batching or rock crushing operations. For the purpose of this chapter surface mining shall mean those operations described in this paragraph which collectively result in more than three acres of land being disturbed or that result in pit walls more than thirty feet high and steeper than one horizontal to one vertical. Surface mining shall not include disturbances of greater than three acres of land during any time period if the cumulative area that has not been rehabilitated according to the reclamation requirements outlined in this chapter is less than three acres. Surface mining shall not include excavation or removal of sand, gravel, clay, rock, top soil, or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface mining shall not include excavation or grading conducted for farming, on-site road construction or other on-site construction, but shall include adjacent or off-site borrow pits except those on landowner's property for use on access roads on such property. Prospecting and exploration activities shall be included within the definition of surface mining when they are of such nature and extent as to exceed the qualifying sizes listed above or when collectively they disturb more than one acre per eight acres of land area.

(2) "Unit of surface mined area" shall mean the area of land and water covered by each operating permit that is actually newly disturbed by surface mining during each twelve-month period of time, beginning at the date of issuance of the permit, and shall comprise the area from which overburden and/or minerals have been removed, the area covered by spoil banks, and all additional areas used in surface mining operations which by virtue of such use are thereafter susceptible to excessive erosion.

(3) "Abandonment of surface mining" shall mean a cessation of surface mining, not set forth in an operator's plan of operation or by any other sufficient written notice, extending for more than six consecutive months or when, by reason of examination of the premises or by any other means, it becomes the opinion of the department of natural resources that the operation has in fact been abandoned by the operator: *Provided*, That the operator does not, within thirty days of receipt of written notification from the department of his intent to declare the operation abandoned, submit evidence to the department's satisfaction that the operation is in fact not abandoned.

(4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic ore, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction uses.

(5) "Overburden" shall mean the earth, rock, and other materials that lie above a natural deposit of mineral.

(6) "Surface mining refuse" shall mean all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of minerals during the surface mining operations on the operating permit area, and shall include all waste materials deposited on or in the permit area from other sources.

(7) "Spoil bank" shall mean a deposit of excavated overburden or mining refuse.

(8) "Operator" shall mean any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(9) "Department" means the department of natural resources.

(10) "Reclamation" shall mean the reasonable protection of all surface resources subject to disruption from surface mining and rehabilitation of the surface resources affected by surface mining including the area under stockpiled materials. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to reestablish on a continuing basis the vegetative cover, soil stability, water conditions, and safety conditions appropriate to the intended subsequent use of the area.

(11) "Reclamation plan" shall mean the operator's written proposal, as required and approved by the department, for reclamation of the affected resources which shall include, but not be limited to:

(a) A statement of the proposed subsequent use of the land after reclamation which is signed by all individuals with a possessory interest in the land, or a copy of the conveyance that expressly grants or reserves the right to extract the mineral by surface mining methods, or if the conveyance does not expressly grant the right to extract

the mineral by surface mining methods, then documentation that under applicable state law, the operator has the legal authority to extract the mineral by those methods: *Provided*, That the applicant must provide notice reasonably calculated to advise all individuals with a possessory interest of the intent to remove minerals and the proposed subsequent use. If any individual with a possessory interest does not respond to the notice within sixty days, that person's signature shall not be required;

(b) Evidence that this subsequent use would not be illegal under local zoning regulations;

(c) Proposed practices to protect adjacent surface resources;

(d) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(e) Manner and type of revegetation or other surface treatment of disturbed areas;

(f) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(g) Method of control of contaminants and disposal of surface mining refuse;

(h) Method of diverting surface waters around the disturbed areas;

(i) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution;

(j) Such maps and other supporting documents as reasonably required by the department; and

(k) A time schedule for reclamation that meets the requirements of RCW 78.44.090. [1987 c 258 § 1; 1984 c 215 § 1; 1970 ex.s. c 64 § 4.]

78.44.035 "Segment" to be defined by rule. The department shall by rule define the term "segment" as used in RCW 78.44.090 and 78.44.140 to establish the depth or extent of the operation covered. [1987 c 258 § 3.]

78.44.040 Administration of chapter—Rule-making authority. The department of natural resources is charged with the administration of this chapter. In order to implement the chapter's terms and provisions, the department, under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter. [1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

78.44.050 Chapter cumulative and nonexclusive—Other laws not affected. This chapter shall not affect any of the provisions of the state fisheries laws (Title 75 RCW), the state water pollution control laws (Title 90 RCW), the state game laws (Title 77 RCW), or any other state laws, and shall be cumulative and nonexclusive. [1970 ex.s. c 64 § 6.]

78.44.060 Investigations, research, etc.—Dissemination of information. The department shall have the authority to conduct or authorize investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1970 ex.s. c 64 § 7.]

78.44.070 Cooperation with other agencies—Receipt and expenditure of funds. The department may cooperate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1970 ex.s. c 64 § 8.]

78.44.080 Operating permits—Required—Applications. After January 1, 1971, no operator shall engage in surface mining without having first obtained an operating permit from the department. Except as otherwise permitted in this section a separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department an operator must submit an application on a form provided by the department, which shall contain the following information and any other pertinent data required by the department:

(1) Name and address of the legal landowner, any purchaser of the land under a real estate contract, and the operator and, if any of these are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(2) Materials to be surface mined;

(3) Type of surface mining to be performed;

(4) Expected starting date of surface mining;

(5) Anticipated termination date of the surface mining project;

(6) Expected amount of mineral to be surface mined;

(7) Maximum depth of surface mining;

(8) Size and legal description of the area that will be disturbed by surface mining. If more than ten acres will be disturbed by surface mining or, regardless of the amount of land to be disturbed, if the department finds that conditions warrant it and so requests, a map of the area to be surface mined shall be submitted. The map shall show the boundaries of the area of land which will be affected; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built in conjunction with the surface mining operation; and the names of the surface and mineral owners of all lands within the surface mining area;

(9) A plan of surface mining that will provide, within limits of normal operational procedure of the industry,

for completion of surface mining and associated disturbances on each segment of the area for which a permit is requested so that reclamation can be initiated at the earliest possible time on those portions of the surface mined area that will not be subject to further disturbance by the mining operation. Whenever feasible, visual screening, vegetative or otherwise, will be maintained or established on the property containing the surface mining to screen the view of the operation from public highways, public parks, and residential areas.

(10) A reclamation plan that must be acceptable to and approved by the department, except as provided in RCW 78.44.100. An operator may not depart from an approved plan without having previously obtained from the department written approval of his proposed change.

The department may adopt rules and regulations permitting an operator of more than one surface mining operation to submit a single application for a combined operating permit covering all of his surface mining operations. Such application may require detailing of information required by this section for each separate location. An operator operating under such a combined permit may submit a consolidated reclamation program covering all his operations under rules and regulations prescribed by the department, but may be required to furnish specific information relative to reclamation of any single operating area if the department determines that such is necessary to carry out the purposes of this chapter. [1970 ex.s. c 64 § 9.]

78.44.090 Reclamation plans. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with surface mining and in any case shall be initiated at the earliest possible time after completion or abandonment of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a permit is requested.

A reclamation plan will be approved by the department if it adequately provides for the accomplishment of the activities specified in the definition of "reclamation plan", RCW 78.44.030(11), and meets those of the following minimum standards that are applicable:

(1) Excavations made to a depth not less than two feet below the low groundwater mark, which will result in the establishment of a lake of sufficient area and depth of water to be useful for residential, recreational, game, or wildlife purposes, shall be reclaimed in the following manner:

(a) All banks in soil, sand, gravel, and other unconsolidated materials shall be sloped to two feet below the low groundwater line at a slope no steeper than one and one-half feet horizontal to one foot vertical;

(b) Portions of solid rock banks shall be stepped or other measures be taken to permit a person to escape from the water.

(2) In all other excavations in soil, sand, gravel, and other unconsolidated materials, the side slopes and the

slopes between successive benches shall be no steeper than one and one-half feet horizontal to one foot vertical for their entire length.

(3) The sides of all strip pits and open pits in rock and other consolidated materials shall be no steeper than one foot horizontal to one foot vertical, or other precautions must be taken to provide adequate safety.

(4) The slopes of quarry walls in rock or other consolidated materials shall have no prescribed angle of slope, but where a hazardous condition is created that is not indigenous to the immediate area, the quarry shall be either graded or backfilled to a slope of one foot horizontal to one foot vertical or other precautions must be taken to provide adequate safety.

(5) In strip mining operations the peaks and depressions of the spoil banks shall be reduced to a gently rolling topography which will minimize erosion and which will be in substantial conformity with the immediately surrounding land area.

(6) In no event shall any provision of this section be construed to allow stagnant water to collect or remain on the surface mined area. Suitable drainage systems shall be constructed or installed to avoid such conditions if natural drainage is not possible.

(7) All grading and backfilling shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the director for a supervised sanitary fill.

(8) In all types of surface mining, in order to prevent water pollution, all acid-forming surface mining refuse shall be disposed of by covering all acid-forming materials with at least two feet of clean fill. The final surface covering shall be graded so that surface water will drain away from the disposal area.

(9) Vegetative cover will be required in the reclamation plan as appropriate to the future use of the land.

(10) All surface mining that will disturb streams must comply with the requirements of the state fisheries laws (Title 75 RCW), and every application for an operating permit for such operations must have a reclamation plan that shall have been approved by the department of fisheries with regard to operations in streams as required by Title 75 RCW. [1970 ex.s. c 64 § 10.]

78.44.100 Inspections—Permits—Duration of operating permits—Modification of reclamation plan—Successor operators. Upon receipt of an application for a permit, the surface mining site must be inspected by a representative of the department. Within twenty-five days of receipt of the application and reclamation plan by the department and receipt of the permit fee, the department shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies.

Failure to act within the twenty-five day period on the reclamation plan shall not be cause for a denial of a permit. The department shall set the amount of the bond or other security required for a permit governing the surface mining operation set forth in the application.

If the department refuses to approve a reclamation plan in the form submitted by the operator, it shall notify the operator, in writing, stating the reasons for its refusal and listing such additional requirements to the operator's reclamation plan as are necessary for the approval of the plan by the department. Within thirty days, the operator shall either accept such additional requirements as part of the reclamation plan or file notice of appeal.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface mining authorized by the permit is completed or abandoned, unless the permit is suspended by the department as provided in this chapter. The operating permit shall provide that the reclamation plan may be modified, after timely notice and opportunity for hearing, at any time during the term of the permit for any of the following reasons:

- (1) To modify the requirements so that they will not conflict with existing laws;
- (2) The department determines that the previously adopted reclamation plan is clearly impossible or impracticable to implement and maintain;
- (3) The department determines that the previously adopted reclamation plan is obviously not accomplishing the intent of this chapter; or
- (4) The operator and the department mutually agree to change the reclamation plan.

When one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon him by this chapter as to such operation: *Provided*, That both operators have complied with the requirements of this chapter and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this chapter. [1984 c 215 § 3; 1970 ex.s. c 64 § 11.]

78.44.110 Fees. The permit fees required under this chapter shall be as follows:

(1) The basic fee for the permit shall be two hundred fifty dollars per permit year for each separate location, payable with submission of the application and annually thereafter with submission of the report required in RCW 78.44.130: *Provided*, That a person who has held a valid surface mining permit and whose property has never been disturbed for surface mining may keep such permit in effect by paying an annual fee of fifty dollars. Before a person holding a fifty dollar permit begins surface mining during any permit year, that person shall pay the remainder of the two hundred fifty dollar fee.

(2) In addition, there shall be a five dollar per acre fee for all acreage exceeding ten acres which was newly disturbed by surface mining during the previous permit year, which acreage fee shall be paid at the time of submission of the report required in RCW 78.44.130.

(3) All fees collected shall be deposited in the general fund. [1987 c 258 § 2; 1984 c 215 § 4; 1970 ex.s. c 64 § 12.]

78.44.120 Performance bonds and other security. Upon receipt of an operating permit an operator other than a public or governmental agency shall not commence surface mining until the operator has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under the provisions of chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be surface mined during the next twelve-month period and any previously surface mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. If an operator increases the area to be surface mined during the twelve month period, the department may increase the amount of the bond to compensate for the increase. The department shall have the authority to determine the amount of the bond that shall be required, and for any reason may refuse any bond not deemed adequate.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted under it.

In lieu of the surety bond required by this section the operator may file with the department a cash deposit, negotiable securities acceptable to the department, an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department, or bank letters of credit acceptable to the department.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two or more surface mining operations may be submitted by an operator in lieu of separate bonds for each separate operation. [1984 c 215 § 5; 1977 c 66 § 1; 1970 ex.s. c 64 § 13.]

78.44.130 Reports. Within thirty days after completion or abandonment of mining on an area under permit or within thirty days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be provided by department rules and regulations, and each year thereafter until reclamation is

completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the department, which report shall:

- (1) Identify the operator and permit number;
- (2) Locate the operation by subdivision, section, township, and range, and with relation to the nearest town or other well known geographic feature;
- (3) Estimate acreage to be newly disturbed by surface mining in the next twelve-month period; and
- (4) Update any maps previously submitted or provide such maps as may be specifically requested by the department. Such maps shall show:
 - (a) The operating permit area;
 - (b) The unit of surface mined area;
 - (c) The area to be surface mined during the next twelve-month period;
 - (d) If completed, the date of completion of surface mining;
 - (e) If not completed, the area that will not be further disturbed by the mining operations; and
 - (f) The date of beginning, amount, and current status of reclamation performed during the previous twelve months. An operator operating under a combined operating permit may submit a single annual report, but such report shall include the data required in this section for each separate operating area. [1970 ex.s. c 64 § 14.]

78.44.140 Inspection of permit area—Deficiencies—Extension of performance periods—Performance actions by department—Recovery of expenses—Enforcement. Upon receipt of the operator's report, and at any other reasonable time the department may elect, the department shall cause the permit area to be inspected to determine if the operator has complied with the reclamation plan and the department's rules and regulations.

The operator shall proceed with reclamation as scheduled in the reclamation plan. Following any written notice by the department noting deficiencies, the operator shall commence action within thirty days, or as directed by the department if it has determined that emergency actions are required, to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: *Provided*, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The department may extend performance periods referred to in this section and in RCW 78.44.090, for delays clearly beyond the operator's control, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

Within thirty days after notification by the operator and when in the judgment of the department reclamation of a unit of surface mined area is properly completed, the mining operator shall be notified in writing and his bond on said area shall be released or decreased proportionately.

If reclamation of surface mined land is not proceeding in accordance with the reclamation plan and the operator has not commenced action to rectify deficiencies

within thirty days after notification by the department or as directed by the department, or if reclamation is not properly completed in conformance with the reclamation plan within two years after completion or abandonment of surface mining on any segment of the permit area, the department is authorized, with the staff, equipment and material under his control, or by contract with others, to take such actions as are necessary for the reclamation of the surface mined areas. If the department intends to undertake the reclamation, the department shall ascertain the probable costs of reclamation and shall notify the operator, the surety, and the owner of the probable costs. The operator or surety, or both, shall pay that amount to the department for reclaiming the surface mined land. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The department shall notify the operator, the owner, and the surety by order. The order shall state the amount of necessary expenses incurred by the department in reclaiming the surface mined land and a notice that the amount is due and payable to the department by the operator and the surety to the extent that the amount has not already been paid. The department shall refund all amounts received above the amount of expenses incurred.

If the amount specified in the notice or order is not paid within thirty days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the notice or order is directed do business to recover the amount specified. The surety shall be liable to the state to the extent of the bond.

The amount owed the department by the operator for the reclamation performed by the state may be recovered by a lien against the reclaimed property, which may be enforced in the same manner and with the same effect as a mechanic's lien.

In addition to the other liabilities imposed by this chapter, failure to commence action to rectify deficiencies in reclamation within thirty days after notification by the department or failure satisfactorily to complete reclamation work on any segment of the permit area within two years after completion or abandonment of surface mining on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit and refusal to issue another permit to the delinquent operator until such deficiencies are corrected by the operator. [1984 c 215 § 6; 1970 ex.s. c 64 § 15.]

78.44.150 Operating without permit—Penalty. Any operator conducting surface mining within the state of Washington without a valid operating permit shall be guilty of a gross misdemeanor. Each day of operation shall constitute a separate offense. [1970 ex.s. c 64 § 16.]

78.44.160 Enjoining or stopping illegal operations—Penalty—Notice—Remission or mitigation of penalty—Appeal. When the department finds that an operator is conducting surface mining on an area for which a valid operating permit is not in effect, or is conducting surface mining in any manner not authorized by his operating permit or by the rules and regulations adopted by the department, the department may forthwith order such operator to suspend all such operations until compliance is effected or assured to the satisfaction of the department. In the event the operator fails or declines to obey such order, the operator shall be subject to a civil penalty in an amount of not more than five hundred dollars for each violation. Every day on which a failure or declining to obey the order continues is a separate violation.

The penalty provided for in this section shall be imposed by notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion considers proper, provided the department considers the remission or mitigation to be in the best interests of carrying out the purposes of this chapter.

A person incurring a penalty under this section may appeal the penalty as provided in RCW 78.44.170. The appeal shall be filed within thirty days of receipt of notice imposing the penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, the appeal shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application.

A penalty imposed under this section becomes due and payable thirty days after receipt of a notice imposing the penalty unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the penalty becomes due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from the disposition. If an appeal of the penalty is filed, the penalty becomes due and payable only upon completion of all review proceedings provided for in RCW 78.44.170 and the issuance of a final decision by the department confirming the penalty in whole or in part.

If the penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any county in which the person incurring the penalty does business, to recover the penalty. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in this chapter. The attorney general shall forthwith take the necessary legal action to enjoin, or otherwise cause to be stopped,

such conduct of surface mining. [1984 c 215 § 7; 1970 ex.s. c 64 § 17.]

78.44.170 Appeals. Appeals from determinations made under this chapter shall be made under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended and shall be considered a contested case within the meaning of the administrative procedure act (chapter 34.04 RCW). [1970 ex.s. c 64 § 18.]

78.44.175 Surface mining of coal—Preemption of chapter by federal laws, programs. In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8.]

78.44.180 Confidentiality. All reclamation plans, operators' reports and other required information under this chapter shall be for the confidential use of the department which shall by rule or regulation provide for the release thereof to proper interested persons. [1970 ex.s. c 64 § 20.]

78.44.910 Previously mined land. This act shall not direct itself to the reclamation of land mined prior to January 1, 1971. [1970 ex.s. c 64 § 22.]

78.44.920 Effective date—1970 ex.s. c 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

78.44.930 Severability—1970 ex.s. c 64. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 64 § 24.]

Chapter 78.52

OIL AND GAS CONSERVATION

Sections

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Oil or natural gas exploration in marine waters: RCW 90.58.550.

78.52.001 Declaration of purpose. It is hereby declared to be in the public interest to foster, encourage, and promote the exploration, development, production, and utilization of oil and gas in the state in such manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such manner as to assure that the maximum economic recovery of oil and gas may be obtained and the rights of owners thereof fully protected; to conduct such oil and gas operations in a manner that will maintain a safe and healthful environment for the people of Washington and protect the state's natural resources; and to encourage, authorize, and provide for cycling, recycling, pressure maintenance and secondary recovery operations in order that the maximum economic recovery of oil and gas may be obtained to the end that landowners, royalty owners, producers, and the general public may realize and enjoy the greatest possible benefits from these vital resources. [1983 c 253 § 1; 1951 c 146 § 1.]

78.52.010 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Certificate of clearance" means a permit prescribed by the committee for the transportation or the delivery of oil, gas, or product.

(2) "Committee" means the oil and gas conservation committee.

(3) "Development unit" means the maximum area of a pool which may be drained efficiently and economically by one well.

(4) "Division order" means an instrument showing percentage of royalty or rental divisions among royalty owners.

(5) "Fair and reasonable share of the production" means, as to each separately-owned tract or combination of tracts, that part of the authorized production from a pool that is substantially in the proportion that the amount of recoverable oil or gas under the development unit of that separately-owned tract or tracts bears to the recoverable oil or gas or both in the total of the development units in the pool.

(6) "Field" means the general area which is underlaid by at least one pool and includes the underground reservoir or reservoirs containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(7) "Gas" means all natural gas, all gaseous substances, and all other fluid or gaseous hydrocarbons not defined as oil in subsection (12) of this section, including but not limited to wet gas, dry gas, residue gas, condensate, and distillate, as those terms are generally understood in the petroleum industry.

(8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the committee.

(9) "Illegal product" means any product derived in whole or part from illegal oil or illegal gas.

(10) "Interested person" means a person with an ownership, basic royalty, or leasehold interest in oil or gas within an existing or proposed development unit or unitized pool.

(11) "Lessee" means the lessee under an oil and gas lease, or the owner of any land or mineral rights who has the right to conduct or carry on any oil and gas development, exploration and operation thereon, or any person so operating for himself or others.

(12) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of gravity, that are in the liquid phase in the original reservoir conditions and are produced and recovered at the wellhead in liquid form.

(13) "Operator" means the person who operates a well or unit or who has been designated or accepted by the owners to operate the well or unit, and who is responsible for compliance with the committee's rules and policies.

(14) "Owner" means the person who has the right to develop, operate, drill into, and produce from a pool and to appropriate the oil or gas that he or she produces therefrom, either for that person or for that person and others.

(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind and includes any governmental or political subdivision or any agency thereof.

(16) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a structure which is completely separated from any other zone in the same structure such that the accumulations of oil or gas are not common with each other is considered a separate pool and is covered by the term "pool" as used in this chapter.

(17) "Pooling" means the integration or combination of two or more tracts into an area sufficient to constitute a development unit of the size for one well as prescribed by the committee.

(18) "Product" means any commodity made from oil or gas.

(19) "Protect correlative rights" means that the action or regulation by the committee should afford a reasonable opportunity to each person entitled thereto to recover or receive without causing waste his or her fair and reasonable share of the oil and gas in this tract or tracts or its equivalent.

(20) "Royalty" means a right to or interest in oil or gas or the value from or attributable to production, other than the right or interest of a lessee, owner, or operator, as defined herein. Royalty includes, but is not limited to the basic royalty in a lease, overriding royalty, and production payments. Any such interest may be referred to in this chapter as "royalty" or "royalty interest." As used in this chapter "basic royalty" means the royalty reserved in a lease. "Royalty owner" means a person who owns a royalty interest.

(21) "Supervisor" means the state oil and gas supervisor.

(22) "Unitization" means the operation of all or part of a field or reservoir as a single entity for operating purposes.

(23) "Waste" in addition to its ordinary meaning, means and includes:

(a) "Physical waste" as that term is generally understood in the petroleum industry;

(b) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner which results or is probable to result in reducing the quantity of oil or gas to be recovered from any pool in this state under operations conducted in accordance with prudent and proper practices or that causes or tends to cause unnecessary wells to be drilled;

(c) The inefficient above-ground storage of oil, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas;

(d) The production of oil or gas in such manner as to cause unnecessary water channeling, or coning;

(e) The operation of an oil well with an inefficient gas-oil ratio;

(f) The drowning with water of any pool or part thereof capable of producing oil or gas, except insofar as and to the extent authorized by the committee;

(g) Underground waste;

(h) The creation of unnecessary fire hazards;

(i) The escape into the open air, from a well producing oil or gas, of gas in excess of the amount which is reasonably necessary in the efficient development or production of the well;

(j) The use of gas for the manufacture of carbon black, except as provided in RCW 78.52.140;

(k) Production of oil and gas in excess of the reasonable market demand;

(l) The flaring of gas from gas wells except that which is necessary for the drilling, completing, or testing of the well; and

(m) The unreasonable damage to natural resources including but not limited to the destruction of the surface, soils, wildlife, fish, or aquatic life from or by oil and gas operations. [1983 c 253 § 2; 1951 c 146 § 3.]

78.52.020 Conservation committee created. (1) There is hereby created and established an oil and gas conservation committee, which shall consist of the land commissioner, the director of ecology, four residents of the state of Washington appointed by the governor, and the state treasurer.

(2) Three of the members appointed by the governor shall reside east of the Cascades. The fourth member appointed by the governor shall reside west of the Cascades.

(a) The members appointed by the governor shall serve subject to confirmation by the senate.

(b) The members appointed by the governor shall serve four-year terms except for initial appointments, which shall be made as follows: One member shall serve

for one year, one member shall serve for two years, one member shall serve for three years, and one member shall serve for four years. All subsequent appointments shall be for four years. In the event of a vacancy the governor shall make an appointment, consistent with this section, for the duration of the vacated term.

(3) The chairman and the executive secretary of the committee shall be elected by the members of the committee.

(4) The members of the committee may act through designated agents or deputies for the purpose of carrying out the provisions of this chapter. [1983 c 253 § 31; 1971 ex.s. c 180 § 7; 1961 c 300 § 7; 1951 c 146 § 4.]

Reviser's note: The definitions of RCW 90.48.315 apply to this section. Funds for the purposes of carrying out this section are provided from the coastal protection fund, RCW 90.48.390 and 90.48.400. The authority and enforcement of rules pertaining to this section are covered in RCW 90.48.380 and 90.48.907.

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.48.907.

78.52.025 Hearings and meetings of committee. The committee shall hold hearings or meetings at such times and places as may be found by the committee to be necessary to carry out its duties. The committee may establish its own rules for the conduct of public hearings or meetings consistent with other applicable law. [1983 c 253 § 3; 1951 c 146 § 5. Formerly RCW 78.52.060.]

78.52.030 Employment of personnel. The committee shall have the authority and it shall be its duty to employ all personnel necessary to carry out the provisions of this chapter. [1951 c 146 § 6.]

78.52.031 Conduct of hearings—Evidence. The committee shall have the power to subpoena witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the committee or a court, or from obedience to the subpoena of the committee or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture: *Provided*, That nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before such committee or court for determination. No person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise before the committee or court, or in obedience to its subpoena: *Provided, however*, That no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. [1983 c 253 § 5; 1951 c 146 § 7. Formerly RCW 78.52.080.]

78.52.032 Hearing examiners. In addition to the powers and authority, either express or implied, granted to the Washington oil and gas conservation committee by virtue of the laws of this state, the committee may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the committee, provide for the appointment of one or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the committee and to make reports and recommendations to the committee with respect thereto. Any member of the committee, or its staff or any other person designated by the committee, or the supervisor when this power is so delegated, may serve as an examiner. The committee shall adopt rules governing hearings to be conducted before examiners. [1983 c 253 § 10.]

78.52.033 Failure of witness to attend or testify—Contempt. In case of failure or refusal on the part of any person to comply with a subpoena issued by the committee or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any superior court in the state, upon the application of the committee, may compel him to comply with such subpoena, and to attend before the committee and produce such records, books, and documents for examination, and to give his testimony and shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein. [1951 c 146 § 8. Formerly RCW 78.52.090.]

78.52.035 Attorney for committee. The attorney general shall be the attorney for the committee: *Provided*, That in cases of emergency, the committee may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the committee until such time as the attorney general may take charge of the litigation. [1951 c 146 § 9. Formerly RCW 78.52.110.]

78.52.037 Department of natural resources designated agent of the committee—Powers and duties—State oil and gas supervisor—Deputy supervisors—Employment of personnel. The department of natural resources is the designated agent of the committee for the purpose of carrying out this chapter. It shall administer and enforce this chapter consistent with the policies adopted by the committee, together with all rules and orders which the committee may adopt and delegate, including but not limited to issuing permits, orders, enforcement actions, and other actions or decisions authorized to be made under this chapter. The department shall designate a state oil and gas supervisor who shall be charged with duties as may be delegated by the department. The department of natural resources may designate one or more deputy supervisors and employ all personnel necessary including the appointment of examiners as provided in RCW 78.52.032 to carry out this chapter and the rules and orders of the committee. [1983 c 253 § 4.]

78.52.040 Duty and powers of committee—In general. It shall be the duty of the committee to administer and enforce the provisions of this chapter by the adoption of policies, and all rules, regulations and orders promulgated hereunder, and the committee is hereby vested with jurisdiction, power and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1983 c 253 § 6; 1951 c 146 § 10.]

78.52.045 Committee to participate in and administer federal Safe Drinking Water Act in conjunction with the departments of ecology, natural resources, and social and health services. See RCW 43.21A.445.

78.52.050 Rules, regulations and orders—Time and place of hearing—Notices. The committee shall have authority to make such reasonable rules, regulations and orders as may be necessary from time to time for the proper administration and enforcement of this chapter. Unless otherwise required by law or by this chapter or by rules of procedure made under this chapter, the committee may make such rules, regulations and orders, after notice, as the basis therefor. The notice may be given by publication in some newspaper of general circulation in the state in a manner and form which may be prescribed by the committee by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the committee, and any person having any interest in the subject matter of the hearing shall be entitled to be heard. In addition, written notice shall be mailed to all interested persons who have requested, in writing, notice of committee hearings, rulings, policies, and orders. The committee shall establish and maintain a mailing list for this purpose. Substantial compliance with these mailing requirements is deemed compliance with the provisions herewith. [1983 c 253 § 7; 1951 c 146 § 11.]

78.52.070 Hearing upon petition for hearing—Time for action. Any interested person shall have the right to have the committee call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the committee by filing a verified written petition therefor, which shall state in substance the matter and reasons for and nature of the action requested. Upon receipt of any such request the committee, if in its judgment a hearing is warranted and justifiable, shall promptly call a hearing thereon, and after such hearing, and with all convenient speed, and in any event within twenty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. [1951 c 146 § 12.]

78.52.100 Records—Copies as evidence—Copies to be furnished. All rules, regulations, policies, and orders of the committee, all petitions, copies of all notices and actions with affidavits of posting, mailing or publications pertaining thereto, all findings of fact, and transcripts of all hearings shall be in writing and shall be

entered in full by the committee in the permanent official records of the office of the commissioner of public lands and shall be open for inspection at all times during reasonable office hours. A copy of any rule, regulation, policy, order, or other official records of the committee, certified by the executive secretary of the committee, shall be received in evidence in all courts of this state with the same effect as the original. The committee is hereby required to furnish to any person upon request, copies of all rules, regulations, policies, orders, and amendments thereof. [1983 c 253 § 8; 1951 c 146 § 13.]

78.52.120 Drilling permit required—Notice. Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall apply to the committee upon such form as the committee may prescribe, and shall pay to the state treasurer a fee of the following amounts for each application:

- (1) For each well the estimated depth of which is three thousand five hundred feet or less, two hundred fifty dollars;
- (2) From three thousand five hundred one feet to seven thousand feet, five hundred dollars;
- (3) From seven thousand one feet to twelve thousand feet, seven hundred fifty dollars; and
- (4) From twelve thousand one feet and deeper, one thousand dollars.

In addition, as pertains to the tract upon which the well is proposed to be located, the applicant must notify the surface landowner, the landowner's tenant, and other surface users in the manner provided by regulations of the committee that a drilling permit has been applied for by furnishing each such surface landowner, tenant, and other users with a copy of the application concurrent with the filing of the application. Within fifteen days of receipt of the application, each such surface landowner, the landowner's tenant, and other surface users have the right to inform the committee of objections or comments as to the proposed use of the surface by the applicant, and the committee shall consider the objections or comments.

The drilling of any well is prohibited until a permit is given and such fee has been paid as herein provided. The committee shall have the authority to prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well above sea level, and such other relevant and reasonable information as the committee may deem necessary or convenient to effectuate the purposes of this chapter.

The committee shall issue a permit if it finds that the proposed drilling will be consistent with this chapter, the rules, and orders adopted under it, and is not detrimental to the public interest. The committee shall impose conditions and restrictions as necessary to protect the public interest and to ensure compliance with this chapter, and the rules and orders adopted by the committee. A person shall not apply to drill a well in search of oil or

gas unless that person holds an ownership or contractual right to locate and operate the drilling operations upon the proposed drilling site. A person shall not be issued a permit unless that person prima facie holds an ownership or contractual right to drill to the proposed depth, or proposed horizon. Proof of prima facie ownership shall be presented to the committee. [1983 c 253 § 11; 1951 c 146 § 14.]

78.52.125 Environmental impact statement required when drilling affects surface waters of the state—

Drilling may be denied, when. Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ecology shall prepare and submit to each member of the committee a report examining the potential environmental impact of the proposed well and recommendations for committee action thereon. If after consideration of the report the committee determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The committee shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the committee cannot be provided the drilling permit shall be denied. [1971 ex.s. c 180 § 8.]

Reviser's note: The definitions of RCW 90.48.315 apply to this section. Funds for the purposes of carrying out this section are provided from the coastal protection fund, RCW 90.48.390 and 90.48.400. The authority and enforcement of rules pertaining to this section are covered in RCW 90.48.380 and 90.48.907.

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.48.907.

78.52.130 Waste prohibited. Waste of oil and gas, as defined in this chapter, is prohibited. [1951 c 146 § 15.]

78.52.140 Carbon black and carbon products—

Permit required. The use of gas from a well producing gas only, or from a well which is primarily a gas well, for the manufacture of carbon black or similar products predominantly carbon, is declared to constitute waste prima facie, and such gas well shall not be used for any such purpose unless it is clearly shown, at a public hearing to be held by the committee, on application of the person desiring to use such gas, that waste would not take place by the use of such gas for the purpose or purposes applied for, and that gas which would otherwise be lost is not available for such purpose or purposes, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant such permit. If the committee finds that the applicant has clearly shown a right to use such gas for the purpose or purposes applied for, it shall issue a permit upon such terms and conditions as may be

found necessary in order to permit the use of the gas, and at the same time require compliance with the intent of this section. [1951 c 146 § 16.]

78.52.150 Investigations authorized. The committee has authority, and it shall be its duty, to make such investigations as it may deem proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the committee. [1951 c 146 § 17.]

78.52.155 Investigations—Powers and duties. (1) The committee shall make investigations as necessary to carry out this chapter.

(2) The committee and the department, consistent with the committee's policies, shall require:

(a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil or gas;

(b) The making and filing of well logs, core samples, directional surveys, and reports on well locations, drilling, and production;

(c) The testing of oil and gas wells;

(d) The drilling, casing, operating, and plugging of wells in such a manner as to prevent the escape of oil or gas out of the casings, or out of one pool into another, the intrusion of water into an oil or gas pool, and the pollution of freshwater supplies by oil, gas, or saltwater and to prevent blowouts, cavings, seepages, and fires;

(e) The furnishing of adequate security acceptable to the department, conditioned on the performance of the duty to plug each dry or abandoned well, the duty to reclaim and clean-up well drilling sites, the duty to repair wells causing waste, the duty to comply with all applicable laws and rules adopted by the committee, orders of the committee and the department, all permit conditions, and this chapter;

(f) The operation of wells with efficient gas-oil and water-oil ratios and may fix these ratios and limit production from wells with inefficient gas-oil or water-oil ratios;

(g) The production of oil and gas from wells be accurately measured by means and upon standards prescribed by the committee, and that every person who produces, sells, purchases, acquires, stores, transports, treats, or processes oil or gas in this state keeps and maintains for a period of five years within this state complete and accurate records thereof, which records shall be available for examination by the committee or its agents at all reasonable times, and that every person file with the committee such reports as it may prescribe with respect to the oil or gas; and

(h) Compliance with all applicable laws and rules of this state.

(3) The committee and the department, consistent with the committee's policies, shall regulate:

(a) The drilling, producing, locating, spacing, and plugging of wells and all other operations for the production of oil or gas;

(b) The physical, mechanical, and chemical treatment of wells, and the perforation of wells;

(c) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations;

(d) Disposal of saltwater and oil field brines;

(e) The storage, processing, and treatment of natural gas and oil produced within this state; and

(f) Reclamation and clean-up of all well sites and any areas directly affected by the drilling, production, operation, and plugging of oil and gas wells.

(4) The committee may limit and prorate oil and gas produced in this state and may restrict future production of oil and gas from any pool in such amounts as will offset and compensate for any production determined by the committee to be in excess of or in violation of "oil allowable" or "gas allowable."

(5) The committee shall classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(6) The committee and the department, consistent with the committee's policies, shall regulate oil and gas exploration and drilling activities so as to prevent or remedy unreasonable or excessive waste or surface destruction. [1983 c 253 § 9.]

78.52.200 Development units authorized for known pools. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights including those of royalty owners, the committee, upon its own motion or upon application of interested persons, shall establish development units covering any known pool. Development units shall be of uniform size and shape for the entire pool unless the committee finds that it must make an exception due to geologic, geographic, or other factors. When necessary, the committee may divide any pool into zones and establish development units for each zone, which units may differ in size and shape from those established in any other zone. [1983 c 253 § 12; 1951 c 146 § 22.]

78.52.205 Development units to be prescribed for pool after discovery—Temporary development units. Within sixty days after the discovery of oil or gas in a pool not then covered by an order of the committee, a hearing shall be held and the committee shall issue an order prescribing development units for the pool. If sufficient geological or other scientific data from drilling operations or other evidence is not available to determine the maximum area that can be efficiently and economically drained by one well, the committee may establish temporary development units to ensure the orderly development of the pool pending availability of the necessary data. A temporary order shall continue in force for a period of not more than twenty-four months at the expiration of which time, or upon the petition of an affected person, the committee shall require the presentation of such geological, scientific, drilling, or other evidence as will enable it to determine the proper development units in the pool. During the interim period between the discovery and the issuance of the temporary

order, permits shall not be issued for the drilling of direct offsets to a discovery well. [1983 c 253 § 13.]

78.52.210 Development units—Size and shape. (1) The size and the shape of any development units shall be such as will result in the efficient and economical development of the pool as a whole, and the size shall not be smaller than the maximum area that can be efficiently and economically drained by one well as determined by competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence. The committee shall fix a development unit of not more than one hundred sixty acres for any pool deemed by the committee to be an oil reservoir, or of six hundred forty acres for any pool deemed by the committee to be a gas reservoir, plus a ten percent tolerance in either case to allow for irregular sections. The committee may, at its discretion, after notice and hearing, establish development units for oil and gas in variance of these limitations when competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence is presented and upon a finding that one well can efficiently and economically drain a larger or smaller area and is justified because of technical, economic, environmental, or safety considerations.

(2) The committee may establish development units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shapes of any development unit or units. Where development units of different sizes or shapes exist in a pool, the committee shall, if necessary, make such adjustments to the allowable production from the well or wells drilled thereon so that each operator in each development unit will have a reasonable opportunity to produce or receive his or her just and equitable share of the production. [1983 c 253 § 14; 1951 c 146 § 23.]

78.52.220 Development units—Location of well. An order establishing development units for a pool shall specify the size and shape of each area and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan. Upon application and after notice and a hearing, if the committee finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the committee is authorized to enter an order permitting the well to be drilled pursuant to permit at a location other than that prescribed by such development order; however, the committee shall include in the order suitable provisions to prevent the production from the development unit of more than its just and equitable share of the oil and gas in the pool. [1983 c 253 § 15; 1951 c 146 § 24.]

78.52.230 Development units—Order must cover entire pool—Modifications. An order establishing development units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the committee from time to time to include additional areas determined to be underlaid by

such pool. When the committee determines that it is necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing development units in a pool may be modified by the committee to increase or decrease the size of development units in the pool or to permit the drilling of additional wells on a reasonably uniform plan in the pool. [1983 c 253 § 16; 1951 c 146 § 25.]

78.52.240 Development units—Pooling of interests. When two or more separately-owned tracts are embraced within a development unit, or when there are separately owned interests in all or a part of the development unit, then the owners and lessees thereof may pool their interests for the development and operation of the development unit. In the absence of this voluntary pooling, the committee, upon the application of any interested person, shall enter an order pooling all interests, including royalty interests, in the development unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing. The applicant or applicants shall have the burden of proving that all reasonable efforts have been made to obtain the consent of, or to reach agreement with, other owners. [1983 c 253 § 17; 1951 c 146 § 26.]

78.52.245 Pooling order—Allocation of production. A pooling order shall be upon terms and conditions that are fair and reasonable and that afford to each owner and royalty owner his or her fair and reasonable share of production. Production shall be allocated as follows:

(1) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the surface acres in each tract bear to the number of surface acres included in the entire unit.

(2) Notwithstanding subsection (1) of this section, if the committee finds that allocation on a surface acreage basis does not allocate to each tract its fair share, the committee shall allocate the production so that each tract will receive its fair share. [1983 c 253 § 18.]

78.52.250 Pooled interests in well in development unit—Allocation of costs—Rights of owners. (1) Each such pooling order shall make provision for the drilling and operation of a well on the development unit, and for the payment of the reasonable actual cost thereof by the owners of interests required to pay such costs in the development unit, plus a reasonable charge for supervision and storage facilities. Costs associated with production from the pooled unit shall be allocated in the same manner as is production in RCW 78.52.245. In the event of any dispute as to such costs the committee shall determine the proper costs.

(2) As to each owner who fails or refuses to agree to bear his or her proportionate share of the costs of the drilling and operation of the well, the order shall provide

for reimbursement of those persons paying for the drilling and operation of the well of the nonconsenting owner's share of the costs from, and only from, production from the unit representing that person's interest, excluding royalty or other interests not obligated to pay any part of the cost thereof. The committee may provide that the consenting owners shall own and be entitled to receive all production from the well after payment of the royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable from production, until the consenting owners have been paid the amount due under the terms of the pooling order or order settling any dispute.

The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the owner's interest in the unit, and, unless the owner has agreed otherwise, his or her proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in this subsection. Each nonconsenting owner is entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to the owner's interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(a) In respect to every such well, one hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well, commencing with first production and continuing until the consenting owners have recovered these costs, with the intent that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he or she initially agreed to pay his or her share of the costs of the well from the beginning of the operation;

(b) One hundred fifty percent of that portion of the costs and expenses of staking the location, well site preparation, rights of way, rigging-up, drilling, reworking, deepening or plugging back, testing, and completing, after deducting any cash contributions received by the consenting owners, and also one hundred fifty percent of that portion of the cost of equipment in the well, up to and including the wellhead connections; and

(c) If there is a dispute regarding the costs, the committee shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

(3) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If

and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in subsection (2) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him or her, and the nonconsenting owner shall own the same interest in the well and the production from it and be liable for the further costs of the operation as if he or she had participated in the initial drilling and operation.

(4) A nonconsenting owner of a tract in a development unit which is not subject to any lease or other contract for the development thereof for oil and gas shall elect within fifteen days of the issuance of the pooling order or such further time as the committee shall, in the order, allow:

(a) To be treated as a nonconsenting owner as provided in subsections (2) and (3) of this section and is deemed to have a basic landowners' royalty of one-eighth, or twelve and one-half percent, of the production allocated to the tract, unless a higher basic royalty has been established in the development unit. If a higher royalty has been established, then the nonconsenting owner of a nonleased tract shall receive the higher basic royalty. This presumed royalty shall exist only during the time that costs and expenses are being recovered under subsection (2) of this section, and is intended to assure that the owner of a nonleased tract receive a basic royalty free of all costs at all times. Notwithstanding anything herein to the contrary, the owner shall at all times retain his or her entire ownership of the property, including the right to execute an oil and gas lease on any terms negotiated, and be entitled to all production subject to subsection (2) of this section; or

(b) To grant a lease to the operator at the current fair market value for that interest for comparable leases or interests at the time of the commencement of drilling; or

(c) To pay his or her pro rata share of the costs of the well or wells in the development unit and receive his or her pro rata share of production, if any.

A nonconsenting owner who does not make an election as provided in this subsection is deemed to have elected to be treated under (a) of this subsection. [1983 c 253 § 19; 1951 c 146 § 27.]

78.52.253 Pooling agreement, offer to pool, pooling order—Fairness to nonconsenting, unleased owners. A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable as applied to nonconsenting, unleased owners only, if it provides for an operating agreement containing any of the following provisions:

(1) Preferential right of the operator to purchase mineral interests in the unit;

(2) A call on or option to purchase production from the unit;

(3) Operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) Prohibition against nonoperators questioning the operation of the unit. [1983 c 253 § 20.]

78.52.255 Operations on development unit deemed operations on each tract—Production allocated to tract deemed produced from each tract—Shut-in well considered on each tract—Lease on part of tract excluded from unit. (1) Operations incident to the drilling of a well upon any portion of a development unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately-owned tract in the development unit by the several owners thereof. That portion of the production allocated to each separately-owned tract included in a development unit covered by a pooling order shall, when produced, be deemed for all purposes, including the payment of royalty, to have been produced from each separately-owned tract by a well drilled thereon. If an oil or gas well on a pooled unit is shut-in, it shall be considered that the shut-in well is on each separately-owned tract in the pooled unit.

(2) If only part of the tract is included in the unit, operations on, production from, or a shut-in well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the lease. [1983 c 253 § 21.]

78.52.257 Dissolution of pooling order—Interests covered by terminated lease—Modification or termination of pooling order—Extension of dissolution of pooling order. (1) An order pooling a development unit shall automatically dissolve:

(a) One year after its effective date if there has been no production of commercial quantities or drilling operations on lands within the unit;

(b) Six months after completion of a dry hole on the unit; or

(c) Six months after cessation of production of commercial quantities from the unit, unless, prior to the expiration of such six-month period, the operator shall, in good faith, commence drilling or reworking operations in an effort to restore production.

(2) Upon the termination of a lease pooled by order of the committee under authority granted in this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

(3) Any party to a pooling order is entitled, after due notice to all parties, to a hearing to modify or terminate a previously entered pooling order upon presenting new evidence showing that the previous determination of reservoir conclusions are substantially incorrect.

(4) The committee, in its discretion, after notice and hearing, may grant additional time, for good cause shown, before a pooling order is automatically dissolved as provided in subsection (1) of this section. In no case may such an extension be longer than six months. [1983 c 253 § 22.]

78.52.260 "Wildcat" or "exploratory" well data confidential. Whenever the committee shall require the making and filing of well logs, directional surveys or reports on the drilling of, subsurface conditions found in,

or reports with respect to the substance produced, or capable of being produced from, a "wildcat" or "exploratory" well, as those terms are used in the petroleum industry, such logs, surveys, reports or information shall be kept confidential by the committee for a period of one year, if at the time of filing such logs, surveys, reports or other information, the owner, lessee, or operator of such well requests that such information be kept confidential: *Provided, however,* That the committee shall have the right to divulge or use such information in a public hearing or suit when it is necessary for the enforcement of the provisions of this chapter or any rule, regulation or order made hereunder. [1951 c 146 § 28.]

78.52.270 Limitation of production to "oil allowable"—Proration. Whenever the total amount of oil which all of the pools in this state can currently produce in accordance with good operating practices, exceeds the amount reasonably required to meet the reasonable market demand, the committee shall limit the oil which may be currently produced in this state to an amount, designated the "oil allowable". The committee shall then prorate this "oil allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented. In determining the "oil allowable", and in prorating such "oil allowable" among the pools in the state, the committee shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas, and separate needs for oil of particular kinds or qualities, and shall formulate rules setting forth standards or a program for the determination of the "oil allowable", and shall prorate the "oil allowable" in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools or areas so that as far as practicable a uniform program will be followed: *Provided, however,* That if the amount prorated to a pool as its share of the "oil allowable" is in excess of the amount which the pool can efficiently produce currently, then the committee shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1951 c 146 § 29.]

78.52.280 Determining market demand—No undue discrimination in proration of "allowable". The committee shall not be required to determine the reasonable market demand applicable to any single pool of oil except in relation to all pools producing oil of similar kind and quality and in relation to the reasonable market demand. The committee shall prorate the "allowable" in such manner as will prevent undue discrimination against any pool or area in favor of another or others resulting from selective buying or nomination by purchasers. [1951 c 146 § 30.]

78.52.290 Limitation of production to "gas allowable"—Proration. Whenever the total amount of gas which all of the pools in this state can currently produce

in accordance with good operating practice exceeds the amount reasonably required to meet the reasonable market demand, the committee shall limit the gas which may be currently produced to an amount, designated as the "gas allowable", which will not exceed the reasonable market demand for gas. The committee shall then prorate the "gas allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented, giving due consideration to location of pipe lines, cost of interconnecting such pipe lines, and other pertinent factors, and insofar as applicable, the provisions of RCW 78.52.270 shall be followed in determining the "gas allowable" and in prorating such "gas allowable" among the pools therein: *Provided, however,* That in determining the reasonable market demand for gas as between pools, the committee shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of gas energy for oil production and promote the most or maximum efficient recovery of oil from such pools. [1951 c 146 § 31.]

78.52.300 Limitation of gas production from one pool. Whenever the total amount of gas which may be currently produced from all of the pools in this state has not been limited as hereinabove provided, and the available production from any one pool containing gas only is in excess of the reasonable market demand or available transportation facilities for gas from such pool, the committee shall limit the production of gas from such pool to that amount which does not exceed the reasonable market demand or transportation facilities for gas from such pool. [1951 c 146 § 32.]

78.52.310 Proration of allowable production in pool—Publication of orders—Emergency orders. Whenever the committee limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the committee shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.

All orders establishing the "oil allowable" and "gas allowable" for this state, and all orders prorating such allowables as herein provided, and any changes thereof, for any month or period shall be issued by the committee on or before the fifteenth day of the month preceding the month for which such orders are to be effective, and such orders shall be immediately published in some newspaper of general circulation printed in Olympia, Washington. No orders establishing such allowables, or prorating such allowables, or any changes thereof, shall

be issued without first having a hearing, after notice, as provided in this chapter: *Provided, however,* When in the judgment of the committee, an emergency requiring immediate action is found to exist, the committee is authorized to issue an emergency order under this section which shall have the same effect and validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this subsection shall remain in force no longer than thirty days, and in any event it shall expire when the order made after due notice and hearing with respect to the subject matter of the emergency order becomes effective. [1951 c 146 § 33.]

78.52.320 Compliance with limitation or proration required. Whenever the production of oil or gas in this state or any pool therein is limited and the "oil allowable" or "gas allowable" is established and prorated by the committee as provided in RCW 78.52.310, no person shall thereafter produce from any well, pool, lease or property more than the production which is prorated thereto. [1951 c 146 § 34.]

78.52.330 Unit operation of separately owned tracts. To assist in the development of oil and gas in this state and to further the purposes of this chapter, the persons owning interests in separate tracts of land, may validly agree to integrate their interests and manage, operate and develop their land as a unit, subject to the approval of the committee. [1951 c 146 § 35.]

78.52.335 Unit operation of pools. (1) The committee shall upon the application of any interested person, or upon its own motion, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The committee shall have the authority to enter an order providing for the unit operations if the committee finds that:

(a) The unit operations are necessary for secondary recovery or enhanced recovery purposes. For purposes of this chapter secondary or enhanced recovery means that oil or gas or both are recovered by any method, artificial flowing or pumping, that may be employed to produce oil or gas, or both, through the joint use of two or more wells with an application of energy extrinsic to the pool or pools. This includes pressuring, cycling, pressure maintenance, or injections into the pool or pools of a substance or form of energy: *Provided,* That this does not include the injection in a well of a substance or form of energy for the sole purpose of (i) aiding in the lifting of fluids in the well, or (ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means;

(b) The unit operations will protect correlative rights;

(c) The operations will increase the ultimate recovery of oil or gas, or will prevent waste, or will prevent the drilling of unnecessary wells; and

(d) The value of the estimated additional recovery of oil and/or gas exceeds the estimated additional cost incident to conducting these operations.

(3) The committee shall also have the authority to enter an order providing for unit operations, after notice and hearing, only if the committee finds that there is clear and convincing evidence that all of the following conditions are met:

(a) In the absence of unitization, the ultimate recovery of oil or gas, or both, will be substantially decreased because normal production techniques and methods are not feasible and will not result in the maximum efficient and economic recovery of oil or gas, or both;

(b) The unit operations will protect correlative rights;

(c) The unit operations will prevent waste, or will prevent the drilling of unnecessary wells;

(d) There has been a discovery of a commercial oil or gas field; and

(e) There has been sufficient exploration, drilling activity, and development to properly define the one or more pools or parts of them in a field proposed to be unitized.

(4) Notwithstanding any of the above, nothing in this chapter may be construed to prevent the voluntary agreement of all interested persons to any plan of unit operations. The committee shall approve operations upon making a finding consistent with subsections (2) (b) and (c) of this section.

(5) The order shall be upon terms and conditions that are fair and reasonable and shall prescribe a plan for unit operations that includes:

(a) A description of the pool or pools or parts thereof to be so operated, termed the unitized area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation of production and costs to the separately-owned tracts in the unitized area. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement, production shall be allocated in a manner calculated to ensure that each owner's correlative rights are protected, and each separately-owned tract or combination of tracts receives its fair and reasonable share of production. Costs shall be allocated on a fair and reasonable basis;

(d) A provision, if necessary, prescribing fair, reasonable, and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the committee from the person's prorated share of production;

(e) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the owner's interest;

(f) The time when the unit operations shall commence, the timetable for development, and the manner and circumstances under which the unit operations shall terminate; and

(g) Additional provisions which are found to be appropriate for carrying out the unit operations and for the protection of correlative rights.

(6) No order of the committee providing for unit operations may become effective until:

(a) The plan for unit operations approved by the committee has been approved in writing by those persons who, under the committee's order, will be required to pay at least seventy-five percent of the costs of unit operations;

(b) The plan has been approved in writing by those persons such as royalty owners, overriding royalty owners, and production payment owners, who own at least seventy-five percent of the production or proceeds thereof that will be credited to interests that are free of costs; and

(c) The committee has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved.

If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the committee shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning required percentages of interest in the unitized area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, or within such additional period or periods of time as the committee prescribes, the order will become unenforceable and shall be vacated by the committee.

(7) An order providing for unit operations may be amended by an order made by the committee in the same manner and subject to the same conditions as an original order, except as provided in subsection (8) of this section, providing for unit operations, but (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by those persons who own interests that are free of costs is not required, and (b) no such amending order may change the percentage for the allocation of oil and gas as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning oil and gas rights in the tract, and no such order may change the percentage for the allocation of cost as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning an interest in the tract or combination of tracts. An amendment that provides for the expansion of the unit area shall comply with subsection (8) of this section.

(8) The committee, by order, may provide for the unit operation of a reservoir or reservoirs or parts thereof that include a unitized area established by a previous order of the committee. The order, in providing for the allocation of unit production, shall first treat the unitized area previously established as a single tract and the portion of the new unit production allocated thereto shall then be allocated among the separately-owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

(9) After the date designated by the committee the unit plan shall be effective, oil and gas leases within the unit area, or other contracts pertaining to the development thereof, shall be changed only to the extent necessary to meet the requirements of the unit plan, and otherwise shall remain in full force. Operations carried on under and in accordance with the unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as the leases or other contracts may relate to the pool or field subject to the unit plan. The amount of production apportioned and allocated under the unit plan to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it is more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all purposes be regarded as production from the separately-owned tract. Lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to the separately-owned tract under the unit plan.

(10) The portion of the unit production allocated to any tract and the proceeds from its sale are the property and income of the several persons to whom, or to whose credit, the portion and proceeds are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale, purchase, or production from a separately-owned tract or combination of tracts may be terminated by the order providing for unit operations but shall remain in force and shall apply to oil and gas allocated to the tract until terminated by an amended division order or contract in accordance with the order.

(12) Except to the extent that parties affected so agree, an order providing for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

(13) After the date designated by the order of the committee that a unit plan shall become effective, the designation of one or more unit operators shall be by vote of the lessees of land in the unit area, in a manner to be provided in the unit plan, and any operations in conflict with such unit plan shall be unlawful and are prohibited.

(14) A certified copy of any order of the committee entered under this section is entitled to be recorded in the auditor's office in the county or counties wherein all or any portion of the unit area is located and, if recorded, constitute notice thereof to all persons. A copy

of this order shall be mailed by certified mail to all interested persons.

(15) No order for unitization may be construed to allow the drilling of a well on a tract within the unit which is not leased or under contract for oil and gas exploration or production. [1983 c 253 § 23.]

78.52.345 Ratable purchase of oil from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation oil from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or operator over any other owner or producer in the same pool offering to sell his or her oil produced therefrom to that person. If the person purchasing or taking for transportation oil does not have need for all such oil lawfully produced within a pool, or if for any reason is unable to purchase all of the oil, then it shall purchase from each operator in a pool ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portion without waste. Nothing in this section may be construed to require any owner or operator to sell his or her product to only one purchaser or to require more than one pipeline connection for each producing well. If any such purchaser or person taking oil for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of his or her own production, or production in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner. [1983 c 253 § 24.]

78.52.355 Ratable purchase of gas from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation gas produced from gas wells or from oil wells from any owner or operator shall purchase or take ratably without discrimination in favor of any owner or operator, over any other owner or operator in a pool. The person shall not discriminate in the quantities purchased, the basis of measurement, or the gas transportation facilities afforded for gas of like quantity, quality, and pressure available from such wells. For the purpose of this section and RCW 78.52.345, reasonable differences in quantity taken or facilities afforded do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity, or pressure of the gas available or the acreage attributable to the well, market requirements, or to the relative lengths of time during which the gas will be available to the purchaser. If the purchaser or person taking gas for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of quantities taken or facilities in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner producing from gas wells in the same pool. [1983 c 253 § 25.]

78.52.365 Enforcement of RCW 78.52.345 and 78.52.355. The committee may administer and enforce RCW 78.52.345 and 78.52.355 in accordance with the

procedures in this chapter for its enforcement and with the rules and orders of the committee. [1983 c 253 § 26.]

78.52.450 Participation of public lands in unit plan. The commissioner of public lands, or other officer or board having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state having control and management of public lands, may, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land and oil and gas rights subject to the control and management of such respective body, board or officer, consent to and participate in any unit plan. [1951 c 146 § 48.]

78.52.460 Unit plan not deemed monopolistic. No plan for the operation of a field or pool of oil or gas as a unit, either whole or in part, created or approved by the committee hereunder shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce. [1951 c 146 § 49.]

78.52.463 Suspension of operations for violation—Notice—Order—Hearing—Stay of order. (1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the committee. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the committee has first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notification within ten days of service of the notice: *Provided*, That the committee may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the committee after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the committee within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The committee or its chairman have the authority to stay or suspend in whole or in part the

suspension order pending a hearing if so requested. The hearing shall constitute a contested case hearing under chapter 34.04 RCW. [1983 c 253 § 29.]

78.52.467 Illegal oil, gas, or product—Sale, purchase, etc., prohibited—Seizure and sale—Deposit of proceeds. (1) The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, gas, or product is prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, gas, or product unless (a) the person knows, or is put on notice of, facts indicating that illegal oil, illegal gas, or illegal product is involved, or (b) the person fails to obtain a certificate of clearance with respect to the oil, gas, or product if prescribed by rule or order of the committee, or fails to follow any other method prescribed by an order of the committee for the identification of the oil, gas, or product.

(2) Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as provided in this section. Seizure and sale shall be in addition to all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. If the committee believes that any oil, gas, or product is illegal, the committee acting through the attorney general, shall bring a civil action in rem in the superior court of the county in which the oil, gas, or product is found, to seize and sell the same, or the committee may include such an action in rem in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. A person claiming an interest in oil, gas, or product affected by an action in rem has the right to intervene as an interested party.

(3) Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem and shall proceed in the name of the state as plaintiff against the oil, gas, or product as defendant. No bond or similar undertaking may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the clerk of the court shall issue a summons, with a copy of the petition attached thereto, directed to the sheriff of the county or to another officer or person whom the court may designate, for service upon all persons having or claiming any interest in the oil, gas, or product described in the petition. The summons shall command these persons to appear and answer within twenty days after the issuance and service of the summons. These persons need not be named or otherwise identified in the summons, and the summons shall be served by posting a copy of the summons, with a copy of the petition attached, on any public bulletin board or at the courthouse of a county where the oil, gas, or product involved is located, and by posting another copy at or near the place where the oil, gas, or product is located. The posting constitutes notice of the action to all persons having or claiming any interest in the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or affidavit or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil,

gas, or product to be seized, and directing the sheriff of the county to take the oil, gas, or product into the sheriff's actual or constructive custody and to hold the same subject to further orders of the court. The court, in the order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him or her under the order to a court-appointed agent. The agent shall give bond in an amount and with such surety as the court may direct, conditioned upon compliance with the orders of the court concerning the custody and disposition of the oil, gas, or product.

(4) Any person having an interest in oil, gas, or product described in order of seizure and contesting the right of the state to seize and sell the oil, gas, or product may obtain its release prior to sale upon furnishing to the sheriff a bond approved by the court. The bond shall be in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released and shall be conditioned upon either redelivery to the sheriff of the released commodity or payment to the sheriff of its market value, if and when ordered by the court, and upon full compliance with further orders of the court.

(5) If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that the oil, gas, or product is contraband, the court shall order its sale by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the oil, gas, or product be sold in specified lots or portions and at specified intervals. Upon sale, title to the oil, gas, or product sold shall vest in the purchaser free of all claims, and it shall be legal oil, legal gas, or legal product in the hands of the purchaser.

(6) All proceeds, less costs of suit and expenses of sale, which are derived from the sale of illegal oil, illegal gas, or illegal product, and all amounts paid as penalties provided for by this chapter, shall be paid into the state treasury for the use of the committee in defraying its expenses in the same manner as other funds provided by law for the use of the committee. [1983 c 253 § 30.]

78.52.470 Objections to order—Hearing required—Modification of order. Any person adversely affected by any order of the committee may, within thirty days from the effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the committee shall accrue in any court to any person unless the person makes application for a hearing as herein provided. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute a contested case under chapter 34.04 RCW and shall be

conducted in accordance with its provisions. [1983 c 253 § 27; 1951 c 146 § 50.]

78.52.480 Appeal from order or decision—Rights of committee. In proceedings for review of an order or decision of the committee, the committee shall be a party to the proceedings and shall have all rights and privileges granted by this chapter to any other party to such proceedings. [1983 c 253 § 28; 1951 c 146 § 51.]

78.52.490 Appeal—How taken. Within thirty days after the application for a hearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on the hearing, the applicant may apply to the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of petitioner's residence or place of business, or (c) in any county where the property or property rights owned by the petitioner is located for a review of such rule, regulation, order or decision. The application for review shall be filed in the office of the clerk of the superior court of Thurston county and shall specifically state the grounds for review upon which the applicant relies and shall designate the rule, regulation, order or decision sought to be reviewed. The applicant shall immediately serve a certified copy of said application upon the executive secretary of the committee who shall immediately notify all parties who appeared in the proceedings before the committee that such application for review has been filed. In the event the court determines the review is solely for the purpose of determining the validity of a rule or regulation of general applicability the court shall transfer venue to Thurston county for a review of such rule or regulation in the manner provided for in RCW 34.04-.070. [1983 c 253 § 32; 1951 c 146 § 52.]

78.52.530 Violations—Injunctions. Whenever it shall appear that any person is violating any provisions of this chapter, or any rule, regulation or order made by the committee hereunder, and if the committee cannot, without litigation, effectively prevent further violation, the committee may bring suit in the name of the state against such person in the superior court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the committee may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1951 c 146 § 56.]

78.52.540 Violations—Injunctions by private party. In the event the committee should fail to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation or order made by the committee hereunder, then any person or party in interest adversely affected by such violation, who has requested the committee in writing to sue, may, to prevent any or further violation, bring suit for that purpose in the superior court of any county where the committee

could have instituted such suit. If, in such suit, the court should hold that injunctive relief should be granted, then the state shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the state had at all times been the complainant. [1951 c 146 § 57.]

78.52.550 Violations—Penalty. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules and regulations issued thereunder, or who fails to perform any act which is herein made his duty to perform, shall be guilty of a gross misdemeanor. [1951 c 146 § 58.]

78.52.900 Short title. This chapter shall be known as the "Oil and Gas Conservation Act." [1951 c 146 § 2.]

78.52.910 Construction—1951 c 146. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for, or intended to be provided for by this chapter. [1951 c 146 § 59.]

78.52.920 Severability—1951 c 146. If any part or parts of this chapter, or the application thereof to any person or circumstances be held to be unconstitutional, such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. The legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that said invalid part or parts thereof would be declared unconstitutional. [1951 c 146 § 60.]

78.52.921 Severability—1983 c 253. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 253 § 34.]

Title 79

PUBLIC LANDS

Chapters

- 79.01 Public lands act.**
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Reviser's note: (1) In addition to chapters listed above, also see the materials located at the end of this title digest: Index of Public Land Acts of Special or Historical Nature not codified in RCW.

(2) The powers and duties of most of the public agencies mentioned in Title 79 RCW have been transferred, at least in part, to the department of natural resources; see chapter 43.30 RCW.

(3) The division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, and the state sustained yield forest committees were abolished in 1957; see RCW 43.30.070.

Access to state timber: Chapter 76.16 RCW.

Acquisition, disposition of state highway property: Chapter 47.12 RCW.

Bridges, obstructions in navigable waters: Chapter 88.28 RCW.

Columbia Basin division: RCW 43.27A.080.

Commissioner of public lands: State Constitution Art. 3 §§ 23, 25; chapter 43.12 RCW.

Compact with the United States: State Constitution Art. 26.

Contracts with United States as to highway property: Chapter 47.08 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

County lands, generally: Chapter 36.34 RCW.

Diking and drainage, improvement districts, benefit to public land: RCW 85.08.370.

Donation law, conflicting claims: RCW 7.28.280.

Ejectment, quiet title: Chapter 7.28 RCW.

Eminent domain: State Constitution Art. 1 § 16.

Eminent domain by state: Chapter 8.04 RCW.

Extensions of streets over tidelands: State Constitution Art. 15 § 3.

Facilitating recovery from Mt. St. Helens eruption—Scope of state agency action: RCW 43.01.210.

Federal areas, jurisdiction: Chapters 37.04 and 37.08 RCW.

Federal funds for forest management: RCW 76.01.040, 76.01.050.

Firewood on state lands: Chapter 76.20 RCW.

Flood control districts may include public lands: Chapter 86.09 RCW.

Forest roads, county: RCW 36.82.140.

Funds for the support of common schools, source: State Constitution Art. 9 § 3.

Governmental lands, exemption from taxation: State Constitution Art. 7 § 1.

Harbor line commission: State Constitution Art. 15 § 1.

Harbor lines, relocation: RCW 79.92.020.

Improvement district, benefit to public land: RCW 85.08.370.

Infractions: Chapter 7.84 RCW.

Indians and Indian lands: Chapter 37.12 RCW.

Insect pests and plant diseases: Chapter 17.24 RCW.

Intergovernmental disposition of property: Chapter 39.33 RCW.

Irrigation districts may include public land: Chapter 87.03 RCW.

Land inspectors: Chapter 79.01 RCW.

Lease of unnecessary lands by director of agriculture: RCW 15.04.090.

Leases of public lands for underground storage of natural gas: RCW 80.40.060.

Marine recreation land act: Chapter 43.99 RCW.

Oil and gas unit plan, participation of public lands: RCW 78.52.450.

Parks and recreation: Chapter 43.51 RCW.

Permanent school fund, investment: State Constitution Art. 16 § 5.

Pest districts may include public lands: Chapter 17.12 RCW.

Public lands, authority of United States over certain areas: State Constitution Art. 25 § 1.

Public shooting grounds: Chapter 77.12 RCW.

Public waterways may include public lands: Chapter 91.08 RCW.

Reclamation by state: Chapter 89.16 RCW.

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School and granted lands

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disposition: State Constitution Art. 16 § 1.

limitations on sales: State Constitution Art. 16 § 3.

manner and terms of sale: State Constitution Art. 16 § 2.

State agency for surveys and maps: Chapter 58.24 RCW.

State boundaries: State Constitution Art. 24 § 1.

State lands subject to easements for removal of materials: RCW 79.01.312, 79.36.230.

Streets over tidelands: RCW 35.21.230 through 35.21.250.

Tidelands

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disclaimer of certain lands by state: State Constitution Art. 17 § 2.

Trespass: Chapter 64.12 RCW.

United States reclamation areas, state lands in: Chapter 89.12 RCW.

Use of state land for game purposes: RCW 77.12.360.

Weed districts may include public lands: Chapter 17.04 RCW.

Wharves, docks, leasing and maintenance: State Constitution Art. 15 § 2.

Wharves and landings: Chapter 88.24 RCW.

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¹Section I is codified as RCW 79.24.020; section 10 as RCW 79-24.090, repealed by 1959 c 257 § 48.

²Section 9 is codified as RCW 79.24.040, repealed by 1959 c 257 § 48; section 10 as RCW 79.24.060; section 11 as RCW 79.24.070, repealed by 1959 c 257 § 48; and section 12 as RCW 79.24.030.

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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Accreted lands, seashore conservation area, jurisdiction and powers: RCW 43.51.685.

Multiple use concept in management and administration of state-owned lands: Chapter 79.68 RCW.

State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Board to determine most beneficial use in accordance with policy: RCW 79.08.1078.

79.01.004 "Public lands", "state lands". Public lands of the state of Washington are lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as hereinafter defined, and the beds of navigable waters belonging to the state.

Whenever used in this chapter the term "state lands" shall mean and include:

School lands, that is, lands held in trust for the support of the common schools;

University lands, that is, lands held in trust for university purposes;

Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

Normal school lands, that is, lands held in trust for state normal schools;

Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive and judicial purposes;

Institutional lands, that is, lands held in trust for state charitable, educational, penal and reformatory institutions; and

All public lands of the state, except tidelands, shorelands, harbor areas and the beds of navigable waters. [1927 c 255 § 1; RRS § 7797-1. Prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.04.010.]

79.01.036 "Improvements". Whenever used in this chapter the term "improvements" when referring to state lands shall mean anything considered a fixture in law placed upon or attached to such lands that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the land. [1982 1st ex.s. c 21 § 147; 1979 ex.s. c 109 § 1; 1927 c 255 § 9; RRS § 7797-9. Prior: 1897 c 89 § 5. Formerly RCW 79.04.090.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Severability—1979 ex.s. c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 109 § 24.]

Effective date—1979 ex.s. c 109: "The provisions of this 1979 amendatory act shall take effect September 26, 1979." [1979 ex.s. c 109 § 25.]

79.01.038 "Valuable materials". "Valuable materials." Whenever used in this title the term "valuable materials" when referring to state lands means any product or material on said lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.01 RCW. [1982 1st ex.s. c 21 § 148; 1959 c 257 § 1.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.040 Board of state land commissioners. The commissioner of public lands, the secretary of state, the state treasurer, the attorney general and the superintendent of public instruction shall constitute the board of state land commissioners, of which the commissioner of public lands shall be chairman, and a clerk in the office of the commissioner of public lands, to be appointed by the chairman, shall be secretary. [1941 c 217 § 1; 1927 c

255 § 10; Rem. Supp. 1941 § 7797-10. Formerly RCW 43.65.010.]

79.01.048 Board of appraisers. The board of state land commissioners shall constitute the board of appraisers provided for in section 2 of Article XVI of the state Constitution, to, before the sale of any lands granted to the state for educational purposes, appraise the value of such lands less the improvements thereon. [1927 c 255 § 12; RRS § 7797-12. Formerly RCW 43.65.030.]

79.01.052 Land commissioners—Office—Records—Rules and regulations. The board of state land commissioners shall have its office and keep its records in the office of the commissioner of public lands, and shall keep a full and complete record of its proceedings relating to the appraisal of lands granted for educational purposes, and the board shall have the power, from time to time, to make and enforce rules and regulations for the carrying out of the provisions of this chapter relating to its duties not inconsistent with law. [1982 1st ex.s. c 21 § 149; 1927 c 255 § 13; RRS § 7797-13. Formerly RCW 43.65.020.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.056 Commissioner of public lands—Deputy—Appointment—Powers—Oath. The commissioner of public lands shall have the power to appoint an assistant, who shall be deputy commissioner of public lands with power to perform any act or duty relating to the office of the commissioner, and, in case of vacancy by death or resignation of the commissioner, shall perform the duties of the office until the vacancy is filled, and shall act as chief clerk in the office of the commissioner of public lands, and, before entering upon his duties, shall take, subscribe and file in the office of the secretary of state the oath of office required by law of state officers. [1927 c 255 § 14; RRS § 7797-14. Prior: 1903 c 33 § 1; RRS § 7815. Formerly RCW 43.12.020.]

79.01.060 Auditors and cashiers—Inspectors—Other assistants. The commissioner of public lands shall have the power to appoint an auditor and cashier, and an assistant auditor and cashier, and to appoint and employ such number of state land inspectors, who shall be citizens of the state of Washington familiar with the work of inspecting and appraising lands, and such number of engineers, draftsmen, clerks and other assistants, as he may deem necessary for the performance of the duties of his office. [1927 c 255 § 15; RRS § 7797-15. Formerly RCW 43.12.030.]

79.01.064 Official bonds. The commissioner of public lands and his appointees shall enter into good and sufficient surety company bonds as required by law, in the following sums: Commissioner of public lands, fifty thousand dollars; auditor and cashier, twenty thousand dollars; assistant auditor and cashier, ten thousand dollars; each state land inspector, five thousand dollars; and

other appointees in such sum as may be fixed in the manner provided by law. [1927 c 255 § 16; RRS § 7797-16. Prior: 1907 c 119 §§ 1, 2; RRS §§ 7816, 7817. Formerly RCW 43.12.040.]

79.01.068 Land inspectors—Compensation—Oaths. The compensation of a state land inspector shall not exceed seven dollars per diem for the time actually employed, and necessary expenses, which shall be submitted to the commissioner of public lands in an itemized and verified account to be approved by him.

Each state land inspector shall, before entering upon his duties, take and subscribe and file in the office of the secretary of state, an oath in substance as follows: "I ----- do solemnly swear that I will well and truly perform the duties of state land inspector in the inspection and appraisal of lands to be selected by, or belonging to, or held in trust by the state of Washington, to the best of my knowledge and ability; that I will personally and carefully examine each parcel or tract of land assigned to me for inspection, and a full and complete report make, as to each tract inspected, of every material fact connected with the location, condition and character of said land, and my estimate of the value thereof, and the amount and estimated value of all timber, or other valuable material, and all improvements thereon, when directed by the commissioner of public lands; that I am not, nor will I become, interested directly or indirectly in the sale, lease or purchase of said lands; that I will not communicate or disclose to any person other than the commissioner of public lands, or his deputy, or the members of the board of state land commissioners, any information in relation to the location, condition, character or value of any lands inspected by me, or the timber or other valuable material, or the improvements thereon; that in the performance of my duties as state land inspector I will in all respects act according to the best of my knowledge and ability, and will protect the interests of the state of Washington." [1927 c 255 § 17; RRS § 7797-17. Prior: (i) 1907 c 256 § 2; RRS § 7836. (ii) 1897 c 89 §§ 6, 8; RRS § 7838. Formerly RCW 43.12.050.]

79.01.072 False statements—Penalty. If any state land inspector shall knowingly or wilfully make any false statement in any report of inspection of lands, or any false estimate of the value of lands inspected or the timber or other valuable materials or improvements thereon, or shall knowingly or wilfully divulge anything or give any information in regard to lands inspected by him, other than to the commissioner of public lands, the deputy commissioner of public lands, or the board of state land commissioners, he shall forthwith be removed from office, and shall be deemed guilty of a felony and in such case it shall be the duty of the commissioner of public lands and of the members of the board of state land commissioners, to report all facts within their knowledge to the proper prosecuting officer to the end that prosecution for the offense may be had. [1927 c 255 § 18; RRS § 7797-18. Formerly RCW 43.12.060.]

79.01.074 Department authority to accept land. The department is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state which shall then become a part of the state forests. No grant may be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of natural resources of the result of the examination. [1986 c 100 § 48.]

79.01.076 Selection to complete uncompleted grants. So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisal is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 §§ 5, 7, 9, 10. Formerly RCW 79.08.050.]

Lieu lands: Chapter 79.28 RCW.

79.01.080 Relinquishment on failure or rejection of selection. In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board or agent thereof or by the state of Washington or any officer, board or agent thereof or which may be hereafter selected by the state of Washington or the commissioner of public lands, in pursuance to any grant of public lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason, shall request it, the commissioner of public lands shall have the authority and power

on behalf of the state to relinquish to the United States such tract of land. [1927 c 255 § 20; RRS § 7797-20. Prior: 1899 c 63 § 1. Formerly RCW 79.08.060.]

79.01.084 Appraisal, sale and lease of state lands—Blank forms of applications. The commissioner of public lands shall cause to be prepared, and furnish to applicants, blank forms of applications for the appraisal and purchase of any state lands and the purchase of timber, fallen timber, stone, gravel, or other valuable materials situated thereon, and the lease of state lands, which forms shall contain such instructions as will inform and aid intending applicants in making applications. [1982 1st ex.s. c 21 § 150; 1959 c 257 § 2; 1927 c 255 § 21; RRS § 7797-21. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.08.040.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.088 Who may purchase or lease—Application—Fees. Any person desiring to purchase any state lands, or to purchase any timber, fallen timber, stone, gravel, or other valuable materials situated on state lands, or to lease any state lands, shall file in the office of the commissioner of public lands an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board of natural resources in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account (RMCA) fund as established under RCW 79.64.010 in the general fund. [1982 1st ex.s. c 21 § 151; 1979 ex.s. c 109 § 2; 1967 c 163 § 4; 1959 c 257 § 3; 1927 c 255 § 22; RRS § 7797-22. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.010.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.092 Inspection and appraisal—Minimum price of lands for educational purposes—Improvements on land. When in the judgment of the department of natural resources, there is sufficient interest for the appraisal and sale, or the lease, for any lawful purpose, excepting mining of valuable minerals or coal, or extraction of petroleum or gas, of state lands, the department shall cause each tract of land to be inspected as to its topography, development potential, forestry, agricultural and grazing qualities, coal, mineral, stone, gravel or other valuable material, the distance from any city or town, railroad, river, irrigation canal, ditch or other waterway, and location of utilities. In case of an application to purchase land granted to the state for educational purposes, the department shall submit a report to the board of natural resources, which board shall fix the

value per acre of each lot, block, subdivision or tract proposed to be sold in one parcel, which value shall be not less than ten dollars per acre. In case of applications to purchase state lands, other than lands granted to the state for educational purposes and capitol building lands, the department shall appraise and fix the value thereof. In case of interest for the lease of state lands, for any lawful purposes other than that of mining for valuable minerals or coal, or extraction of petroleum or gas, the department shall fix the rental value thereof, and only improvements authorized in writing by the department of natural resources or consistent with the approved plan of development shall be placed on state lands under lease and these improvements shall become the property of the state at the expiration or termination of the lease unless otherwise agreed upon under the terms of the lease: *Provided*, That these improvements may be required by the department of natural resources to be removed at the end of the lease term by the lessee at his expense. Any improvements placed upon any state lands without the written authority of the commissioner of public lands shall become the property of the state and be considered part of the land. [1979 ex.s. c 109 § 3; 1967 ex.s. c 78 § 3; 1959 c 257 § 4; 1941 c 217 § 2; 1935 c 136 § 1; 1927 c 255 § 23; Rem. Supp. 1941 § 7797-23. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.020.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.093 Statutes not applicable to state tidelands, shorelands, harbor areas, and the beds of navigable waters. RCW 79.01.092, 79.01.096, 79.01.136, 79.01.140, 79.01.148, 79.01.244, 79.01.248, 79.01.252, 79.01.256, 79.01.260, 79.01.264, 79.01.268, 79.01.724, 79.12.570, 79.28.080, 79.01.242, and 79.01.277 do not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. [1979 ex.s. c 109 § 22.]

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.094 Powers of board over lands granted to state for educational purposes. The board of state land commissioners shall exercise general supervision and control over the sale or lease for any purpose of land granted to the state for educational purposes and also over the sale of timber, fallen timber, stone, gravel and all other valuable materials situated thereon. It shall be the duty of the commissioner of public lands, on its request, to furnish the board with all reports, data and information in the records of his office pertaining to any such proposed sale or lease, and the board of state land commissioners shall have power, if it deems it advisable, to order that any particular sale or lease of such land or valuable materials be held in abeyance pending further inspection and report. The board may cause such further inspection and report of land or materials involved in

any proposed sale or lease to be made and for that purpose shall have power to employ its own inspectors, cruisers and other technical assistants. Upon the basis of such further inspection and report the board shall determine whether or not, and the terms upon which, the proposed sale or lease shall be consummated. [1941 c 217 § 3; Rem. Supp. 1941 § 7797-23A. Formerly RCW 43.65.060.]

79.01.095 Economic analysis of state lands held in trust—Scope—Use. Periodically at intervals to be determined by the board of natural resources, the commissioner of public lands shall cause an economic analysis to be made of those state lands held in trust, where the nature of the trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.

The most recently made analysis shall be considered by the department of natural resources in making decisions as to whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel and sand.

The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends; (4) present and probable future income from leases or the sale of land products; and (5) present and probable future tax income derivable therefrom specifically including additional state, local and other tax revenues from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited to, development as irrigated agricultural land. [1969 ex.s. c 131 § 1.]

79.01.096 Maximum and minimum acreage subject to sale or lease—Exception—Approval by legislature or regents—Duration of leases—Alteration of leases. Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except by legislative directive or with the consent of the board of regents of the University of Washington.

Any land granted to the state by the United States may be sold or leased for any lawful purpose in such minimum acreage as may be fixed by the department of natural resources.

Except as otherwise provided in RCW 79.01.770, upon the application of a school district or any institution of higher education for the purchase or lease of lands granted to the state by the United States, the department of natural resources may offer such land for sale or lease to such school district or institution of higher education in such acreage as it may determine, consideration being given upon application of a school

district to school site criteria established by the state board of education: *Provided*, That in the event the department thereafter proposes to offer such land for sale or lease at public auction such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board of natural resources.

State lands shall not be leased for a longer period than ten years: *Provided*, That such lands may be leased for the purpose of prospecting for, developing and producing oil, gas and other hydrocarbon substances or for the mining of coal subject to the provisions of chapter 79.14 RCW and RCW 79.01.692. Such lands may be leased for agricultural purposes for any period not to exceed twenty-five years except that such leases which authorize tree fruit and grape production may be for any period up to fifty-five years. Such lands may be leased for public school, college or university purposes for any period not exceeding seventy-five years. Such lands may be leased for commercial, industrial, business, or recreational purposes for any period not exceeding fifty-five years. Such lands may be leased for residential purposes for any period not to exceed ninety-nine years. If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of such lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided herein. [1982 c 54 § 1; 1979 ex.s. c 109 § 4; 1971 ex.s. c 200 § 1; 1970 ex.s. c 46 § 1; 1967 ex.s. c 78 § 1; 1959 c 257 § 5; 1955 c 394 § 1; 1927 c 255 § 24; RRS § 7797-24. Prior: 1915 c 147 § 15; 1909 p 256 § 4; 1907 c 256 § 5; 1903 c 91 § 3; 1897 c 89 § 11. Formerly RCW 79.12.030.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

Severability—1971 ex.s. c 200: "If any provision of this 1971 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 200 § 6.]

Public lands, funds for support of common school fund: State Constitution Art. 9 § 3.

School and granted lands: State Constitution Art. 16.

University of Washington: Chapter 28B.20 RCW.

79.01.100 Maximum area of urban or suburban state land—Platting. The department of natural resources shall cause all unplatted state lands, within the limits of any incorporated city or town, or within two miles of the boundary thereof, where the valuation of such lands is found by appraisement to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The department of natural resources

may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, according to the designation prescribed by the department of natural resources. Such plats shall be made in duplicate, and when properly authenticated by the department of natural resources, one copy thereof shall be filed in the office of the department and one copy in the office of the county auditor in which the lands are situated, and said auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in his office.

In selling lands subject to the provisions of Article 16, section 4, of the state Constitution, the department of natural resources will be permitted to sell the land within the required land subdivision without being required to complete the construction of streets, utilities, and such similar things as may be required by any local government entity in the instance of the platting of private or other property within their area of jurisdiction: *Provided*, That no construction will be permitted on lands so sold until the purchaser or purchasers collectively comply with all of the normal requirements for platting. [1967 ex.s. c 78 § 4; 1959 c 257 § 6; 1927 c 255 § 25; RRS § 7797-25. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.040.]

Platting: State Constitution Art. 16 § 4.

Recording—Duties of county auditor: Chapter 65.04 RCW.

79.01.104 Vacation of plat by commissioner—Vested rights. When, in the judgment of the commissioner of public lands the best interest of the state will be thereby promoted, the commissioner may vacate any plat or plats covering state lands, and vacate any street, alley or other public place therein situated: *Provided*, That the vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of the foregoing power and authority to vacate the commissioner shall enter an order in the records of his office and at once forward a certified copy thereof to the county auditor of the county wherein said platted lands are located and said auditor shall cause the same to be recorded in the miscellaneous records of his office and noted on the plat by reference to the volume and page of the record. [1959 c 257 § 7; 1927 c 255 § 26; RRS § 7797-26. Prior: 1903 c 127 §§ 1, 2. Formerly RCW 79.12.050.]

79.01.108 Vacation on petition—Preference right to purchase. Whenever all the owners and other persons having a vested interest in the lands abutting on any street, alley, or other public place, or any portion thereof, in any plat of state lands, lying outside the limits of any incorporated city or town, shall petition the commissioner of public lands therefor, the commissioner may vacate any such tract, alley or public place or part thereof and in such case all such streets, alleys or other public places or portions thereof so vacated shall be

platted, appraised and sold or leased in the manner provided for the platting, appraisal and sale or lease of similar lands: *Provided*, That where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners, or other persons having a vested interest in the lands abutting on any of the lots, blocks or other parcels platted upon the lands embraced within any area vacated as hereinabove provided, shall have a preference right for the period of sixty days from the date of filing such plat and the appraisal of such lots, blocks or other parcels of land in the office of the commissioner of public lands, to purchase the same at the appraised value thereof. [1959 c 257 § 8; 1927 c 255 § 27; RRS § 7797-27. Prior: 1903 c 127 § 3. Formerly RCW 79.12.060.]

79.01.112 Entire section may be inspected. Whenever application is made to purchase less than a section of unplatted state lands, the commissioner of public lands may order the inspection of the entire section or sections of which the lands applied for form a part. [1959 c 257 § 9; 1927 c 255 § 28; RRS § 7797-28. Prior: 1909 c 223 § 2. Formerly RCW 79.12.070.]

79.01.116 Date of sale limited by time of appraisal. In no case shall any lands granted to the state be offered for sale unless the same shall have been appraised by the board of natural resources within ninety days prior to the date fixed for the sale, and in no case shall any other state lands, or any materials on any state lands, be offered for sale unless the same shall have been appraised by the commissioner of public lands within ninety days prior to the date fixed for the sale. [1982 1st ex.s. c 21 § 152; 1959 c 257 § 10; 1935 c 55 § 1 (adding section 29 to 1927 c 255 in lieu of original section 29 which was vetoed); RRS § 7797-29. Prior: 1909 c 223 § 2. Formerly RCW 79.12.080.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.120 Survey to determine area subject to sale or lease. The commissioner of public lands may cause any state lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [1982 1st ex.s. c 21 § 153; 1959 c 257 § 11; 1927 c 255 § 30; RRS § 7797-30. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.090.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.124 Timber and valuable materials sold separately, when. Timber, fallen timber, stone, gravel, or other valuable material situated upon state lands may be sold separate from the land, when in the judgment of the commissioner of public lands, it is for the best interest of the state so to sell the same, and in case the estimated amount of timber on any tract of state lands, shall exceed one million feet to the quarter section, the timber shall be sold separate from the land. When application is

made for the purchase of any valuable material situated upon state lands, the same inspection and report shall be had as upon an application for the appraisal and sale of such lands, and the commissioner of public lands shall appraise the value of the material applied for. No timber, fallen timber, stone, gravel, or other valuable material, shall be sold for less than the appraised value thereof. [1982 1st ex.s. c 21 § 154; 1959 c 257 § 12; 1929 c 220 § 1; 1927 c 255 § 31; RRS § 7797-31. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.100.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.
Forests and forest products: Title 76 RCW.

79.01.128 Management of public lands within watershed area providing water supply for city or town—Exclusive method of condemnation by city or town for watershed purposes. In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology: *Provided*, That if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in this section, RCW 79.44.003 and chapter 79.68 RCW shall be construed to affect any existing rights held by third parties in the lands applied for. [1971 ex.s. c 234 § 11; 1927 c 255 § 32; RRS § 7797-32. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.110.]

Condemnation proceedings where state land involved: RCW 8.28.010.
Municipal corporation in adjoining state may condemn watershed property: RCW 8.28.050.

79.01.132 Timber and valuable materials sold separately—Lump sum sales or scale sales—Installment purchases, when—Time limit on removal—Reversion—Extensions, payment and interest—Direct sale to applicant without notice, when. When any timber, fallen timber, stone, gravel, or other valuable material on state lands is sold separate from the land, it may be sold as a lump sum sale or as a scale sale: *Provided*, That upon the request of the purchaser, any lump sum sale over five thousand dollars appraised value shall be on the installment plan. Lump sum sales under five thousand dollars appraised value shall be paid for in cash. The initial deposits required in RCW 79.01.204,

not to exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales over five thousand dollars not less than five thousand dollars, shall be made on the day of the sale. The purchaser shall notify the department of natural resources before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the department of natural resources may require, in the amount determined by the department, advance payment for the removal, processing, and/or cutting of timber or other valuable materials, or bank letters of credit, payment bonds, or assignments of savings accounts acceptable to the department as adequate security. The amount of such advance payments and/or security shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied: *Provided however*, That all or a portion of said initial deposit may be applied as the final payment for said materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

In all cases where timber, fallen timber, stone, gravel, or other valuable material is sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. Said specified period shall not exceed five years from the date of the purchase thereof: *Provided*, That the specified periods in the sale contract for stone, sand, fill material, or building stone shall not exceed twenty years: *Provided further*, That in all cases where, in the judgment of the department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources may extend the time for the removal thereof for any period not exceeding twenty years from the date of purchase for the stone, sand, fill material or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material, upon payment to the state of a sum to be fixed by the department of natural resources, based on the estimated loss of income per acre to the state resulting from the granting of the extension but in no event less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale and the maximum extension payment shall be set forth in the contract. The method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The department of natural resources shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund to which was credited the original purchase price of the material so sold: *And provided further*, That any sale of timber, fallen timber, stone, gravel, sand, fill material, or building stone of an appraised value of one thousand

dollars or less may be sold directly to the applicant for cash at full appraised value without notice or advertising.

The provisions of this section apply unless otherwise provided by statute. [1983 c 2 § 16. Prior: 1982 c 222 § 11; 1982 c 27 § 3; 1975 1st ex.s. c 52 § 1; 1971 ex.s. c 123 § 1; 1969 ex.s. c 14 § 2; 1961 c 73 § 1; 1959 c 257 § 13; 1927 c 255 § 33; RRS § 7797-33; prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.120.]

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1982 c 222: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 222 § 17.]

79.01.133 Timber and valuable materials sold separately—"Lump sum sale" and "scale sale" defined for purposes of RCW 79.01.132. Unless a contrary meaning is clearly required by the context, as used in RCW 79.01.132 the following words shall have the meaning indicated:

(1) "Lump sum sale" shall mean "any sale offered with a single total price applying to all the material conveyed."

(2) "Scale sale" shall mean "any sale offered with per unit prices to be applied to the material conveyed." [1969 ex.s. c 14 § 1.]

79.01.134 Contract for sale of rock, gravel, etc.—Forfeiture—Royalties—Monthly reports—Audit of books. The department of natural resources, upon application by any person, firm or corporation, may enter into a contract providing for the sale and removal of rock, gravel, sand and silt located upon state lands or state forest lands, and providing for payment to be made therefor on a royalty basis. The issuance of a contract shall be made after public auction and such contract shall not be issued for less than the appraised value of the material.

Each application made pursuant to this section shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The department of natural resources may in its discretion include in any contract entered into pursuant to this section, such terms and conditions protecting the interests of the state as it may require. In each such contract the department of natural resources shall provide for a right of forfeiture by the state, upon a failure to operate under the contract or pay royalties for periods therein stipulated, and he may require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department of natural resources. The amount of rock, gravel, sand, or silt taken under the contract shall be reported monthly

by the purchaser to the department of natural resources and payment therefor made on the basis of the royalty provided in the contract.

The department of natural resources may inspect and audit books, contracts and accounts of each person removing rock, gravel, sand, or silt pursuant to any such contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [1985 c 197 § 1; 1961 c 73 § 11.]

79.01.135 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value. Whenever, pursuant to RCW 79.01.134, the commissioner of public lands enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the commissioner shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of such removal. [1984 c 212 § 10.]

79.01.136 Separate appraisal of improvements before sale or lease—Damages and waste to be deducted—Appraisal by review board. Before any state lands are offered for sale, or lease, or are assigned, the department of natural resources may establish the fair market value of those authorized improvements not owned by the state. In the event that agreement cannot be reached between the state and the lessee on the fair market value, such valuation shall be submitted to a review board of appraisers. The board shall be as follows: One member to be selected by the lessee and his expense shall be borne by the lessee; one member selected by the state and his expense shall be borne by the state; these members so selected shall mutually select a third member and his expenses shall be shared equally by the lessee and the state. The majority decision of this appraisal review board shall be binding on both parties. For this purpose "fair market value" is defined as: The highest price in terms of money which a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller, each prudently knowledgeable and assuming the price is not affected by undue stimulus. All damages and wastes committed upon such lands and other obligations due from the lessee shall be deducted from the appraised value of the improvements: *Provided*, That the department of natural resources on behalf of the respective trust may purchase at fair market value those improvements if it appears to be in the best interest of the state from the *RMCA of the general fund. [1979 ex.s. c 109 § 5; 1959 c 257 § 14; 1927 c 255 § 34; RRS § 7797–34. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.130.]

Reviser's note: *(1) "RMCA" apparently refers to the resource management cost account established in RCW 79.64.020. See RCW 79.01.088.

(2) This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.140 Possession after termination or expiration of lease—Extensions for crop rotation. No lessee of state lands shall remain in possession of said lands after the termination or expiration of his lease, without the written consent of the commissioner of public lands, and then only upon such terms and conditions as such written consent shall prescribe: *Provided*, That the department of natural resources may authorize for a specific period beyond the term of the lease cropping improvements for the purpose of crop rotation which shall be deemed authorized improvements. [1979 ex.s. c 109 § 6; 1927 c 255 § 35; RRS § 7797–35. Prior: 1915 c 147 § 19. Formerly RCW 79.12.140.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.148 Deposit by purchaser to cover value of improvements. If the purchaser of state lands be not the owner of the authorized improvements thereon, he shall deposit with the auctioneer making the sale, at the time of the sale, the appraised value of such improvements, and the commissioner shall pay to the owner of said improvements the sum so deposited: *Provided*, That when the improvements are owned by the state in accordance with the provisions of this chapter or have been acquired by the state by escheat or operation of law the purchaser may, in case of sale, pay for such improvements in equal annual installments at the same time, and with the same rate of interest on deferred payments, as the installments of the purchase price of the land are paid, and under such rules and regulations regarding use and care of said improvements as may be fixed by the commissioner of public lands. [1979 ex.s. c 109 § 7; 1935 c 57 § 1; 1927 c 255 § 37; RRS § 7797–37. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.160.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.152 Witnesses—Compelling attendance, examination, etc., in fixing values. For the purpose of determining the value and character of lands, timber, fallen timber, stone, gravel, or other valuable material, or improvements, the board of state land commissioners, or the commissioner of public lands, as the case may be, may compel the attendance of witnesses by subpoena, at such place as the board, or the commissioner, may designate, and examine such witnesses under oath as to the value and character of such lands, or materials, or improvements and waste or damage to the land. [1927 c 255 § 38; RRS § 7797–38. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1;

1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.170.]

79.01.160 Rules and regulations for removal of timber sold. All sales of timber upon state lands shall be made subject to the right, power and authority of the commissioner of public lands to prescribe rules and regulations governing the manner of the removal of the timber with a view to the protection of the nonmerchantable timber against destruction or injury by fire or from other causes, and such rules or regulations shall be binding upon the purchaser of the timber and his successors in interest and shall be enforced by the commissioner of public lands. [1959 c 257 § 15; 1927 c 255 § 40; RRS § 7797-40. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.190.]

Forest protection: Chapter 76.04 RCW.

79.01.164 Classification of land after timber removed—Lands for reforestation reserved. When the merchantable timber has been sold and actually removed from any state lands, the commissioner of public lands may classify the land, and may reserve from any future sale such portions thereof as may be found suitable for reforestation, and in such case, the commissioner shall enter such reservation in the records in his office, and all such lands so reserved shall not thereafter be subject to sale or lease. The commissioner of public lands shall certify all such reservations for reforestation so made, to the board of natural resources, and it shall be the duty of the department of natural resources, to protect such lands, and the remaining timber thereon, from fire and to reforest the same. [1959 c 257 § 16; 1927 c 255 § 41; RRS § 7797-41. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.200.]

Reforestation: Chapter 76.12 RCW.

79.01.168 Sale of valuable materials—Inspection, appraisal without application or deposit. The commissioner of public lands may cause valuable materials on state lands to be inspected and appraised and offered for sale when authorized by the board of natural resources without an application having been filed, or deposit made, for the purchase of the same. [1961 c 73 § 2; 1959 c 257 § 17; 1927 c 255 § 42; RRS § 7797-42. Prior: 1915 c 147 § 2. Formerly RCW 79.12.210.]

79.01.172 Disposition of crops on forfeited land. Whenever the state of Washington shall become the owner of any growing crop, or crop grown upon, any state lands, by reason of the forfeiture, cancellation or termination of any contract or lease of state lands, or from any other cause, the commissioner of public lands is authorized to arrange for the harvesting, sale or other disposition of such crop in such manner as he deems for the best interest of the state, and shall pay the proceeds of any such sale into the state treasury to be credited to the same fund as the rental of the lands upon which the crop was grown would be credited. [1927 c 255 § 43;

RRS § 7797-43. Prior: 1915 c 89 §§ 1, 2. Formerly RCW 79.12.240.]

79.01.176 Road material—Sale to public authorities—Disposition of proceeds. Any county, city, or town desiring to purchase any stone, rock, gravel, or sand upon any state lands to be used in the construction, maintenance, or repair of any public street, road, or highway within such county, city, or town, may file with the commissioner of public lands an application for the purchase thereof, which application shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name, or other designation, and location of the street, road, or highway upon which the material is to be used. The commissioner of public lands upon the receipt of such an application is authorized to sell said material in such manner and upon such terms as he deems advisable and for the best interest of the state for not less than the fair market value thereof to be appraised by the commissioner of public lands. The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale of the land upon which the material is situated would belong. [1982 1st ex.s. c 21 § 155; 1927 c 255 § 44; RRS § 7797-44. Prior: 1923 c 71 § 1; 1917 c 148 § 13. Formerly RCW 79.12.250.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.184 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when. When the department of natural resources shall have decided to sell any state lands or valuable materials thereon, or with the consent of the board of regents of the University of Washington, or by legislative directive, shall have decided to sell any lot, block, tract, or tracts of university lands, or the timber, fallen timber, stone, gravel, or other valuable material thereon it shall be the duty of the department to forthwith fix the date, place, and time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published once a week for four weeks next before the time it shall name in said notice, in at least one newspaper published and of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold, or the material upon which is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office and the area headquarters administering such sale and in the office of the county auditor of such county, which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the area headquarters and the department's Olympia office: *Provided*, That any sale of timber, fallen timber, stone,

gravel, sand, fill material, or building stone of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at the full appraised value without notice or advertising. [1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.300.]

Effective date—1983 c 2 § 17: "Section 17 of this act shall take effect on July 1, 1983." [1983 c 2 § 18.] This applies to the 1983 c 2 amendments to RCW 79.01.184.

Severability—1983 c 2: See note following RCW 18.71.030.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

County auditor, transfer of duties: RCW 79.08.170.

School and granted lands, manner and terms of sale: State Constitution Art. 16 § 2.

79.01.188 Sale procedure—Pamphlet list of lands or materials—Notice of sale, proof of publishing and posting. The commissioner of public lands shall cause to be printed a list of all public lands, or materials thereon, and the appraised value thereof, that are to be sold in the several counties of the state, said lists to be issued at least four weeks prior to the date of any sale of the lands or materials enumerated thereon, such lands and materials to be listed under the name of the county wherein located, in alphabetical order giving the appraised values, the character of the same, and such other information as may be of interest to prospective buyers. Said commissioner of public lands shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively as reported by such auditors. And said county auditors shall keep the list so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and, when requested so to do, shall mail copies of such lists to residents of their counties. The commissioner of public lands shall retain for free distribution in his office and the district offices sufficient copies of said lists, to be kept in a conspicuous place or receptacle on the counter of the general office of the commissioner of public lands, and the districts, and, when requested so to do, shall mail copies of said lists as issued to any applicant therefor. Proof of publication of the notice of sale shall be made by affidavit of the publisher, or person in charge, of the newspaper publishing the same and proof of posting the notice of sale and the receipt of the lists shall be made by certificate of the county auditor which shall forthwith be sent to and filed with the commissioner of public lands. [1982 1st ex.s. c 21 § 157; 1959 c 257 § 19; 1927 c 255 § 47; RRS § 7797-47. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.310.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

County auditor, transfer of duties: RCW 79.08.170.

79.01.192 Sale procedure—Additional advertising expense. The commissioner of public lands is authorized

to expend any sum in additional advertising of such sale as he shall determine to be for the best interest of the state. [1927 c 255 § 48; RRS § 7797-48. Prior: 1923 c 19 § 1; 1897 c 89 § 14. Formerly codified as RCW 79.12.320.]

79.01.196 Sale procedure—Place of sale—Hours—Reoffer—Continuance. When sales are made by the county auditor, they shall take place at such place on county property as the board of county commissioners may direct in the county in which the whole, or the greater part, of each lot, block or tract of land, or the material thereon, to be sold, is situated. All other sales shall be held at the departmental district offices having jurisdiction over the respective sales. Sales shall be conducted between the hours of ten o'clock in the forenoon and four o'clock in the afternoon.

Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.01.188 and 79.01.192. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock in the forenoon and four o'clock in the afternoon. [1965 ex.s. c 23 § 3; 1959 c 257 § 20; 1927 c 255 § 49; RRS § 7797-49. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.330.]

79.01.200 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction—Direct sale to applicant without notice, when. All sales of land shall be at public auction, and all sales of valuable materials shall be at public auction or by sealed bid to the highest bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than its appraised value: *Provided*, That on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only: *Provided further*, That when valuable material has been appraised at an amount not exceeding twenty thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold: *And provided further*, That any sale of timber, fallen timber, stone, gravel, sand, fill material, or building stone of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [1979 c 54 § 2; 1975 1st ex.s. c 45 § 1; 1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797-50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.340.]

79.01.204 Sale procedure—Conduct of sales—Deposits—Memorandum of purchase—Bid bonds. Sales by public auction under this chapter shall be conducted under the direction of the department of natural resources, by its authorized representative or by the county auditor of the county in which the sale is held. The department's representative and the county auditor are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the land or valuable materials offered for sale, together with any fee required by law for the issuance of contracts, deeds, or bills of sale. Said deposit may, when prescribed in notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of his proceedings with reference to such sales as may be required by the department. [1982 c 27 § 2; 1979 c 54 § 3; 1961 c 73 § 4; 1959 c 257 § 22; 1927 c 255 § 51; RRS § 7797-51. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.350.]

79.01.208 Sale procedure—Readvertisement of lands not sold. If any land so offered for sale be not sold the same may again be advertised for sale, as provided in this chapter, whenever in the opinion of the commissioner of public lands it shall be expedient so to do, and such land shall be again advertised and offered for sale as herein provided, whenever any person shall apply to the commissioner in writing to have such land offered for sale and shall agree to pay, at least the appraised value thereof and shall deposit with the commissioner at the time of making such application a sufficient sum of money to pay the cost of advertising such sale. [1927 c 255 § 52; RRS § 7797-52. Prior: 1923 c 19 § 1; 1913 c

36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 24. Formerly RCW 79.12.360.]

79.01.212 Sale procedure—Confirmation of sale. If no affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, shall be filed with the department of natural resources within ten days from the receipt of the report of the auctioneer conducting the sale of any state lands, or valuable material thereon, and it shall appear from such report that the sale was fairly conducted, that the purchaser was the highest bidder at such sale, and that his bid was not less than the appraised value of the property sold, and if the department shall be satisfied that the lands, or material, sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price at which it shall have been sold, and that the payment, required by law to be made at the time of making the sale, has been made, and that the best interests of the state may be subserved thereby, the department shall enter upon its records a confirmation of sale and thereupon issue to the purchaser a contract of sale, deed or bill of sale, as the case may be, as in this chapter provided. [1982 1st ex.s. c 21 § 158; 1959 c 257 § 23; 1927 c 255 § 53; RRS § 7797-53. Prior: 1907 c 256 § 7; 1903 c 79 § 2; 1897 c 89 § 15; 1895 c 178 § 29. Formerly RCW 79.12.370.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.
County auditor, transfer of duties: RCW 79.08.170.

79.01.216 Sale procedure—Terms—Deferred payments, rate of interest. All state lands shall be sold on terms and conditions established by the board of natural resources in light of market conditions. Sales by real estate contract or for cash may be authorized. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board of natural resources, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of sale and in the contract of sale. All remittances for payment of either principal or interest shall be forwarded to the department of natural resources. [1984 c 222 § 11; 1982 1st ex.s. c 21 § 159; 1969 ex.s. c 267 § 1; 1959 c 257 § 24; 1927 c 255 § 54; RRS § 7797-54. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.380.]

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.220 Sale procedure—Certificate to governor of payment in full—Deed. When the entire purchase price of any state lands shall have been fully paid, the commissioner of public lands shall certify such fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the

purchaser and to be recorded in the office of the commissioner of public lands, and no fee shall be required for any deed of land issued by the governor other than the fee provided for in this chapter. [1982 1st ex.s. c 21 § 160; 1959 c 257 § 25; 1927 c 255 § 55; RRS § 7797-55. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.390.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.224 Sale procedure—Reservation in contract. Each and every contract for the sale of, and each deed to, state lands shall contain the following reservation: "The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved under this section to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: *Provided*, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as

may be necessary to determine the damages which said owner of said land may suffer." [1982 1st ex.s. c 21 § 161; 1927 c 255 § 56; RRS § 7797-56. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.410.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.228 Sale procedure—Form of contract—Forfeiture—Extension of time. The purchaser of state lands under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner of public lands on behalf of the state, with the seal of his office attached, and in a form to be prescribed by the attorney general, in which he shall covenant that he will make the payments of principal and interest, computed from the date the contract is issued, when due, and that he will pay all taxes and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due all rights of the purchaser under said contract may, at the election of the commissioner of public lands, acting for the state, be forfeited, and that when forfeited the state shall be released from all obligation to convey the land. The purchaser's rights under the real estate contract shall not be forfeited except as provided in chapter 61.30 RCW.

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the office of the commissioner of public lands.

The commissioner of public lands may, as he deems advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The commissioner of public lands shall notify the purchaser of any state lands in each instance when payment on his contract is overdue, and that he is liable to forfeiture if payment is not made when due. [1985 c 237 § 18; 1982 1st ex.s. c 21 § 162; 1959 c 257 § 26; 1927 c 255 § 57; RRS § 7797-57. Prior: 1897 c 89 §§ 17, 18, 27; 1895 c 178 §§ 30, 31. Formerly RCW 79.12.400.]

Severability—Effective date—Application—1985 c 237: See RCW 61.30.905 and 61.30.910.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.232 Bill of sale for valuable materials sold separately. When timber, fallen timber, stone, gravel, or other valuable material, shall have been sold separate from the land and the purchase price paid in full, the commissioner of public lands shall cause a bill of sale, signed by the commissioner and attested by the seal of his office, setting forth the time within which such material shall be removed, to be issued to the purchaser and to be recorded in the office of the commissioner of public lands, upon the payment of the fee provided for in this chapter. [1927 c 255 § 58; RRS § 7797-58. Formerly RCW 79.12.420.]

79.01.236 Subdivision of contracts or leases—Fee. Whenever the holder of a contract of purchase of any state lands, or the holder of any lease of any such lands, except for mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender the same to the commissioner with the request to have it divided into two or more contracts, or leases, the commissioner may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the commissioner is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as determined by the board of natural resources for each new contract or lease issued, shall be paid by the applicant and such fee shall be paid into the state treasury to the resource management cost account fund established in the general fund pursuant to RCW 79.64.010. [1982 1st ex.s. c 21 § 163; 1979 ex.s. c 109 § 8; 1959 c 257 § 27; 1955 c 394 § 2; 1927 c 255 § 59; RRS § 7797-59. Prior: 1903 c 79 § 3. Formerly RCW 79.12.260.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.240 Effect of mistake or fraud. Any sale or lease of state lands made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase, or lease, issued thereon, shall be of no effect, and the holder of such contract, or lease, shall be required to surrender the same to the department of natural resources, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of such surrendered contract, or lease, to be refunded to the holder thereof, provided the same has not been paid into the state treasury. [1982 1st ex.s. c 21 § 164; 1959 c 257 § 28; 1927 c 255 § 60; RRS § 7797-60. Prior: 1903 c 79 § 3. Formerly RCW 79.12.280.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.242 Lease of state lands—General. (1) Subject to other provisions of this chapter and subject to rules adopted by the board of natural resources, the department may lease state lands for purposes it deems advisable, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust. Every lease issued by the department, shall contain: (a) The specific use or uses to which the land is to be employed; (b) the improvements required: *Provided*, That a minimum reasonable time is allowed for the completion of the improvements; (c) the rent is payable in advance in quarterly, semiannual, or annual payments, as determined by the department or as agreed

upon by the lessee and the department of natural resources; (d) other terms and conditions as the department deems advisable, subject to review by the board of natural resources, to more nearly effectuate the purposes of the state Constitution and of this chapter.

(2) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases. Notice of intent to lease by negotiation shall be published in at least two newspapers of general circulation in the area in which the land which is to be the subject of negotiation is located within the ninety days immediately preceding commencement of negotiations.

(3) Leases which authorize commercial, industrial, or residential uses on state lands may be entered into by negotiation. Negotiations shall be subject to rules of the board of natural resources. At the option of the department, these leases may be placed for bid at public auction.

(4) Any person, firm or corporation desiring to lease any state lands for any purpose not prohibited by law, may make application to the department, describing the lands sought to be leased on forms to be provided by the department.

(5) Notwithstanding any provision in this chapter to the contrary, in leases for residential purposes, the board of natural resources may waive or modify any conditions of the lease if the waiver or modification is necessary to enable any federal agency or lending institution authorized to do business in this state or elsewhere in the United States to participate in any loan secured by a security interest in a leasehold interest.

(6) Upon expiration of the lease term, if the leased land is not otherwise utilized, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe. Upon the expiration of the one year extension, if the department has not yet determined the disposition of the land for other purposes, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes. The temporary permit may not extend beyond a five year period. [1984 c 222 § 12; 1979 ex.s. c 109 § 10.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.244 Land leased for agriculture open to public for fishing and hunting—Exceptions. All state lands hereafter leased for grazing or agricultural purposes shall be open and available to the public for purposes of hunting and fishing unless closed to public entry because of fire hazard or unless the department of natural resources gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to

the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it shall be unlawful for any person to hunt or fish on any such posted lands.

The department of natural resources shall insert the provisions of this section in all grazing and agricultural leases hereafter issued. [1979 ex.s. c 109 § 9; 1969 ex.s. c 46 § 1; 1959 c 257 § 29; 1947 c 171 § 1; 1927 c 255 § 61; RRS § 7797-61. Prior: 1915 c 147 § 4; 1903 c 79 § 4; 1897 c 89 § 19; 1895 c 178 § 32. Formerly RCW 79.12.430.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.248 Lease procedure—Scheduling auctions.

When the department of natural resources shall have decided to lease any state lands at public auction it shall be the duty of the department to fix the date, place, and time when such lands shall be offered for lease. [1979 ex.s. c 109 § 11; 1927 c 255 § 62; RRS § 7797-62. Prior: 1897 c 89 § 20. Formerly RCW 79.12.440.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.252 Lease procedure—Notice to be posted—Lease to highest bidder. The department shall give thirty days notice of the public auction leasing by posting in some conspicuous place in the county auditor's office, the office of the commissioner of public lands and the area headquarters of the department of natural resources administering such lease, and in at least two newspapers of general circulation in the area in which the leasing shall occur. The notice shall specify the place and time of auction, the appraised value thereof, and describe each parcel to be leased, and the terms and conditions of the lease.

The leasing shall be conducted under the direction of the commissioner of public lands by his authorized representative, or by the auditor for the county in which the land to be leased is located. The commissioner's representative and the county auditor are hereinafter referred to as auctioneers.

The commissioner of public lands is authorized to expend an amount necessary in additional advertising of such lease as he shall determine to be for the best interest of the state.

When leases are auctioned by the county auditor the auction shall take place in the county where the state land to be leased is situated at such place as specified in the notice. All other leases shall be held at the departmental area office having jurisdiction over the leases. Auction shall be conducted between the hours of ten o'clock in the morning and four o'clock in the afternoon. All leasing at public auction shall be by oral or by sealed bid to the highest bidder on the terms prescribed by law

and as specified in the notice hereinbefore provided, and no state land shall be leased for less than the appraised value. [1979 ex.s. c 109 § 12; 1927 c 255 § 63; RRS § 7797-63. Prior: 1897 c 89 § 21; 1895 c 178 § 37. Formerly RCW 79.12.450.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

County auditor, transfer of duties: RCW 79.08.170.

79.01.256 Lease procedure—Rental payment. The person or persons to whom any lease of state lands is awarded, shall pay to the auctioneer in cash or by certified check or accepted draft on any bank in this state, the rental in accordance with his bid, and thereafter all rentals shall be paid in advance to the commissioner of public lands. [1979 ex.s. c 109 § 13; 1927 c 255 § 64; RRS § 7797-64. Prior: 1897 c 89 § 22. Formerly RCW 79.12.460.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.260 Lease procedure—Disposition of moneys. When any state lands have been leased, the auctioneer shall send to the commissioner such cash, certified check, draft or money order received from the successful bidder, together with any additional report of his proceedings as may be required by the commissioner. [1979 ex.s. c 109 § 14; 1927 c 255 § 65; RRS § 7797-65. Prior: 1915 c 147 § 5; 1903 c 79 § 5; 1897 c 89 § 23. Formerly RCW 79.12.470.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.264 Lease procedure—Rejection or approval of leases. The department of natural resources may reject any and all bids for leases when the interests of the state shall justify it, and in such case it shall forthwith refund to the person paying the same, any rental and bid deposit upon the return of receipts issued therefor. If the department approves any leasing made by the auctioneer it shall proceed to issue a lease to the successful bidder upon a form approved by the attorney general. All such leases shall be in duplicate, both to be signed by the lessee, and by the department. The original lease shall be forwarded to the lessee and the duplicate copy kept in the office of the department. [1985 c 197 § 2; 1979 ex.s. c 109 § 15; 1927 c 255 § 66; RRS § 7797-66. Prior: 1897 c 89 §§ 24, 26. Formerly RCW 79.12.480.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.268 Lease procedure—Record of leases—Forfeiture—Time extension. The commissioner of public lands shall keep a full and complete record of all leases issued under the provisions of the preceding sections and the payments made thereon. If such rental be not paid on or before the date the same becomes due, according to the terms of the lease, the commissioner of public lands shall declare a forfeiture, cancel the lease and eject the lessee from the land: *Provided*, That the commissioner of public lands may extend the time for payment of annual rental when, in his judgment, the interests of the state will not be prejudiced thereby. [1979 ex.s. c 109 § 16; 1933 c 139 § 1; 1927 c 255 § 67; RRS § 7797-67. Prior: 1915 c 147 § 6; 1909 c 223 § 5; 1897 c 89 § 25. Formerly RCW 79.12.490.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.277 Lease procedure—Converting to a new lease. Holders of existing leases for state lands may apply for a conversion to a new lease as authorized by this chapter within two years of September 26, 1979. The amount of time expired under any existing lease so converted shall be included in the calculation of the maximum lease term allowed in RCW 79.01.096. [1979 ex.s. c 109 § 17.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.284 Water right for irrigation as improvement. At any time during the existence of any lease of state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, the lessee with the consent of the commissioner of public lands, first obtained, by written application, showing the cost and benefits to be derived thereby, may purchase or acquire a water right appurtenant to and in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement to the lands, then, in case of the sale or lease of such lands to other parties, the lessee acquiring such water right shall be entitled to receive the value thereof as in case of other improvements which he has placed upon the land. [1959 c 257 § 32; 1927 c 255 § 71; RRS § 7797-71. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.12.530.]

79.01.292 Assignment of contracts or leases. All contracts of purchase, or leases, of state lands issued by the department of natural resources shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the purchaser, or lessee, of whom he is the assignee, and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the department

of natural resources and entered of record in its office. [1982 1st ex.s. c 21 § 165; 1927 c 255 § 73; RRS § 7797-73. Prior: 1903 c 79 § 8. Formerly RCW 79.12.270.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.296 Grazing leases—Restrictions—Agricultural leases in lieu of. The lessee, or assignee of any lease, of state lands, leased for grazing purposes, shall not use the same for any other purpose than that expressed in the lease: *Provided*, That such lessee, or his assignee, of state lands, may surrender his lease to the commissioner of public lands and request the commissioner to issue an agricultural lease in lieu thereof, and in such case, the commissioner upon the payment of the fixed rental for agricultural purposes under the appraisalment of said land shall be authorized to issue a new lease, for the unexpired portion of the term of the lease surrendered, under which the lessee shall be permitted to clear, plow and cultivate the lands as in the case of an original lease for agricultural purposes. [1959 c 257 § 34; 1927 c 255 § 74; RRS § 7797-74. Prior: 1903 c 79 § 8. Formerly RCW 79.12.550.]

79.01.300 Leased lands reserved from sale—Exception. State lands held under lease as above provided shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [1927 c 255 § 75; RRS § 7797-75. Prior: 1897 c 89 § 23. Formerly RCW 79.12.560.]

79.01.301 Sale of lands used for grazing or other low priority purposes which have irrigated agricultural potential—Applications—Regulations. (1) The purpose of this section is to provide revenues to the state and its various taxing districts through the sale of public lands which are currently used primarily for grazing and similar low priority purposes, by enabling their development as irrigated agricultural lands.

(2) All applications for the purchase of lands of the foregoing character, when accompanied by a proposed plan of development of the lands for a higher priority use, shall be individually reviewed by the board of natural resources. The board shall thereupon determine whether the sale of the lands is in the public interest and upon an affirmative finding shall offer such lands for sale under the applicable provisions of this chapter: *Provided*, That any such parcel of land shall be sold to the highest bidder but only at a bid equal to or higher than the last appraised valuation thereof as established by appraisers for the department for any such parcel of land: *Provided further*, That any lands lying within United States reclamation areas, the sale price of which is limited or otherwise regulated pursuant to federal reclamation laws or regulations thereunder, need not be offered for sale so long as such limitations or regulations are applicable thereto.

(3) The department of natural resources shall make appropriate regulations defining properties of such irrigated agricultural potential and shall take into account

the economic benefits to the locality in classifying such properties for sale. [1967 ex.s. c 78 § 5.]

79.01.304 Abstracts of state lands. The commissioner of public lands shall cause full and correct abstracts of all the state lands to be made and kept in his office in suitable and well bound books, and other suitable records. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of timber, stone, gravel, or other valuable materials thereon, the date of sale, the name of purchaser, sale price per acre, the date of lease, the name of lessee, the term of the lease, the annual rental, amount of cash paid, amount unpaid and when due, amount of annual interest, and in proper columns such other facts as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time the title was acquired by the state until the issuance of a deed or other disposition of the land by the state. [1982 1st ex.s. c 21 § 166; 1927 c 255 § 76; RRS § 7797-76. Prior: (i) 1897 c 89 § 32; RRS § 7823. (ii) 1911 c 59 § 9; RRS § 7899. Formerly RCW 43.12.080.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.308 Applications for federal certification that lands are nonmineral. The commissioner of public lands is authorized and directed to make applications, and to cause publication of notices of applications, to the interior department of the United States for certification that any land granted to the state is nonmineral in character, in accordance with the rules of the general land office of the United States. [1927 c 255 § 77; RRS § 7797-77. Prior: 1897 c 89 § 33. Formerly RCW 79.08.130.]

79.01.312 Certain state lands subject to easements for removal of valuable materials. All state lands granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right of way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the

lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property. [1982 1st ex.s. c 21 § 167; 1927 c 255 § 78; RRS § 7797-78. Prior: 1911 c 109 § 1. Formerly RCW 79.36.010.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.230.

State lands, eminent domain: RCW 8.28.010.

79.01.316 Certain state lands subject to easements for removal of valuable materials—Private easement over public lands subject to common user in removal of valuable materials. Every grant, deed, conveyance, contract to purchase or lease made since the fifteenth day of June, 1911, or hereafter made to any person, firm, or corporation, for a right of way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any state lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since the fifteenth day of June, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right of way, or who has so acquired or shall hereafter acquire such valuable materials situated upon state lands or contiguous to, or in proximity to, such right of way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission. [1982 1st ex.s. c 21 § 168; 1927 c 255 § 79; RRS § 7797-79. Prior: 1911 c 109 § 2. Formerly RCW 79.36.020.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.240.

Washington utilities and transportation commission: Chapter 80.01 RCW.

79.01.320 Certain state lands subject to easements for removal of valuable materials—Reasonable facilities and service for transportation must be furnished. Any person, firm or corporation, having acquired such right of way or easement since the fifteenth day of June, 1911, or hereafter acquiring such right of way or easement over any state lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business

thereon, shall accord to the state, or any grantee or lessee thereof, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, from the state, any state lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right of way or easement, or any person, firm, or corporation, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any state lands contiguous to or in proximity to the lands over which such right of way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use, shall accord the use of such right of way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [1982 1st ex.s. c 21 § 169; 1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.36.030.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.250.

79.01.324 Certain state lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing

and order was made affecting a common carrier railroad. [1983 c 4 § 6; 1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.36.040.]

Similar enactment: RCW 79.36.270.

Transportation, general regulations: Chapter 81.04 RCW.

79.01.328 Certain state lands subject to easements for removal of valuable materials—Penalty for violation of orders—Reversion of easement. In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and every violation thereof, and in addition thereto such right of way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way, and connected therewith, shall revert to the state or to the owner of the land over which such right of way is located, and may be recovered in an action instituted in any court of competent jurisdiction. [1982 1st ex.s. c 21 § 170; 1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.36.050.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.280.

79.01.332 Certain state lands subject to easements for removal of valuable materials—Application for right of way—Appraisal of damage—Certificate, contents. Any person, firm or corporation, engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel or other valuable materials from land, and desirous of obtaining a right of way for the purpose of transporting or moving timber, minerals, stone, sand, gravel or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the commissioner of public lands upon a form to be furnished for that purpose, a written application for such right of way, accompanied by a plat showing the location of the right of way applied for with references to the boundaries of the government section in which the lands over and across which such right of way is desired are located. Upon the filing of such application and plat, the commissioner of public lands shall cause the lands embraced within the right of way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right of way, to be appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the commissioner of public lands of the amount

of the appraised value of timber and damages, the commissioner shall issue in duplicate a right of way certificate setting forth the terms and conditions upon which such right of way is granted, as provided in the preceding sections, and providing that whenever such right of way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the commissioner of public lands and one copy delivered to the applicant. [1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.060.]

Similar enactment: RCW 79.36.290.

79.01.336 Certain state lands subject to easements for removal of valuable materials—Forfeiture for non-user. Any such right of way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the commissioner of public lands with the word "canceled", and the date of such cancellation. [1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.070.]

Similar enactment: RCW 79.36.290.

79.01.340 Right of way for roads and streets over, or for county wharves upon, state lands. Any county or city or the United States of America or state agency desiring to locate, establish, and construct a road or street over and across any state lands of the state of Washington shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States of America, or state agency, cause to be filed in the office of the department of natural resources a petition for a right of way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right of way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the department of natural resources, if deemed for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of any timber thereon and notify the petitioner of such appraised value.

If there be no timber on the proposed right of way, or upon the payment of the appraised value of any timber thereon, to the department of natural resources in cash, or by certified check drawn upon any bank in this state, or postal money order, except for all rights of way granted to the department of natural resources on which the timber, if any, shall be sold at public auction or by sealed bid, the department may approve the plat filed with the petition and file and enter the same in the records of his office, and such approval and record shall constitute a grant of such right of way from the state. [1982 1st ex.s. c 21 § 171; 1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW 79.36.080.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.344 Railroad right of way. A right of way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right of way. [1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.090.]

Railroad rights of way: Chapter 81.52 RCW.

79.01.348 Railroad right of way—Procedure to acquire. In order to obtain the benefits of the preceding section any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the commissioner of public lands a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the survey, showing the location of the line of said railroad, the width of the right of way and extra widths, if any, and shall pay to the commissioner of public lands as hereinafter provided the amount of the appraised value of the lands included within said right of way, and extra widths if any are required, and the damages to any lands affected by such right of way or extra widths. [1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.100.]

79.01.352 Railroad right of way—Appraisalment. All state lands over which a right of way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right of way, shall be appraised in like manner, and the appraisalment shall be recorded and the evidence or report

upon which the same is based shall be preserved of record, in the office of the commissioner of public lands, and the commissioner shall send notice to the railroad company applying for the right of way that such appraisal has been made. [1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 §§ 2, 5. Formerly RCW 79.36.110.]

79.01.356 Railroad right of way—Improvements—Appraisal, deposit, etc. Should any improvements, made by anyone not holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisal, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisal for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the commissioner of public lands the value of the same, as shown by said appraisal, within thirty days next following the date thereof. The commissioner of public lands shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the commissioner within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall file claims of ownership of said improvements, within said period of three months, with the commissioner of public lands, the commissioner shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with him. When notice of agreement or a certified copy of a judgment has been so filed, the commissioner of public lands shall pay over to the owner of the improvements the money so deposited. [1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.120.]

79.01.360 Railroad right of way—Release or payment of damages as to improvements outside right of way. When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right of way or extra widths, the applicant for said right of way shall file with the commissioner of public lands a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court. [1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.130.]

79.01.364 Railroad right of way—Certificate. Upon full payment of the appraised value of any right of way for a railroad and of damages to state lands affected, the commissioner of public lands shall issue to the railroad company applying for such right of way a certificate in such form as the commissioner of public lands may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right of way shall be subject to the easement described in the certificate. [1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.36.140.]

79.01.384 Right of way for utility pipe lines, transmission lines, etc. A right of way through, over, and across any state lands or state forest lands, may be granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [1982 1st ex.s. c 21 § 172; 1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.36.150.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.388 Right of way for utility pipe lines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.01-384, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line or transmission line, shall file, with the commissioner of public lands, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line or transmission line, and shall make payment therefor as provided in RCW 79-01.392. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall include the right to cut all standing timber, and/or reproduction within said right of way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right of way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line or transmission line upon full payment of the appraised value thereof. [1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c

148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.36.160.]

79.01.392 Right of way for utility pipe lines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser. Upon the filing of the plat and field notes, as provided in RCW 79.01.388, the land applied for and the standing timber and/or reproduction on the right of way applied for, and the marked danger trees to be felled off the right of way, if any, and the improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase statelands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the department of natural resources deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the standing timber, reproduction, and improvements, if any, the commissioner of public lands shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in his office, and thereafter any sale or lease of the lands affected by such right of way shall be subject to the easement of such right of way. Should the corporation, company, association, individual, or the United States of America, securing such right of way ever abandon the use of the same for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee. [1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.36.170.]

79.01.396 Right of way for irrigation, diking and drainage purposes. A right of way through, over and across any state lands is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1982 1st ex.s. c 21 § 173; 1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.36.180.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.400 Right of way for irrigation, diking and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant hereinabove provided for, the irrigation district, irrigation company, association, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the commissioner of public

lands a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right of way. The land within said right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.36.190.]

79.01.404 Right of way for irrigation, diking and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as hereinabove provided, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the commissioner of public lands shall issue to the applicant a certificate of right of way, and enter the same in the records in his office and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto. [1927 c 255 § 101; RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.36.200.]

79.01.408 Grant of overflow rights. The commissioner of public lands shall have the power to grant to any person or corporation the right, privilege, and authority to perpetually back and hold water upon or over any state lands, and overflow such lands and inundate the same, whenever the commissioner shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the commissioner of public lands may prescribe at the time of the grant, the same may be forfeited by the commissioner of public lands by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the commissioner, for good cause shown to his satisfaction, may extend the time within which such work shall be completed. [1982 1st ex.s. c 21 § 174; 1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.36.210.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Operating agencies: Chapter 43.52 RCW.

79.01.412 Construction of foregoing sections relating to rights of way and overflow rights. The foregoing sections relating to the acquiring of rights of way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights of way or other rights thereover, by condemnation proceedings. [1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.36.220.]

Railroad rights of way: Chapter 81.52 RCW.

79.01.414 Grant of such easements and rights as applicant may acquire in private lands by eminent domain. The department of natural resources may grant to any person such easements and rights in state lands or state forest lands as the applicant applying therefor may acquire in privately owned lands through proceedings in eminent domain. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state. [1982 1st ex.s. c 21 § 175; 1961 c 73 § 12.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.416 Condemnation proceedings where state land is involved. See RCW 8.28.010.

79.01.500 Court review of actions. Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling himself aggrieved by any order or decision of the board of state land commissioners, or the commissioner of public lands, concerning the same, may appeal therefrom to the superior court of the county in which such lands or materials are situated, by serving upon all parties who have appeared in the proceedings in which the order or decision was made, or their attorneys, a written notice of appeal, and filing such notice, with proof, or admission, of service, with the board, or the commissioner, within thirty days from the date of the order or decision appealed from, and at the time of filing the notice, or within five days thereafter, filing a bond to the state, in the penal sum of two hundred dollars, with sufficient sureties, to be approved by the secretary of the board, or the commissioner, conditioned that the appellant shall pay all costs that may be awarded against him on appeal, or the dismissal thereof. Within thirty days after the filing of notice of appeal, the secretary of the board, or the commissioner, shall certify, under official seal, a transcript of all entries in the records of the board, or the commissioner, together with all processes, pleadings and other papers relating to and on file in the case, except evidence used in such proceedings, and file such transcript and papers, at the expense of the applicant, with the clerk of the court to which the appeal is taken. The hearing and trial of said appeal in the superior court shall be de novo before the court, without a

jury, upon the pleadings and papers so certified, but the court may order the pleadings to be amended, or new and further pleadings to be filed. Costs on appeal shall be awarded to the prevailing party as in actions commenced in the superior court, but no costs shall be awarded against the state, the board, or the commissioner. Should judgment be rendered against the appellant, the costs shall be taxed against him and his sureties on the appeal bond, except when the state is the only adverse party, and shall be included in the judgment, upon which execution may issue as in other cases. Any party feeling himself aggrieved by the judgment of the superior court may appeal therefrom to the supreme court or the court of appeals of the state, in the manner, and within the time, for appealing from judgments in actions at law. Unless appeal be taken from the judgment of the superior court, the clerk of said court shall, on demand, certify, under his hand and the seal of the court, a true copy of the judgment, to the board, or the commissioner, which judgment shall thereupon have the same force and effect as if rendered by the board, or the commissioner. In all cases of appeals from orders or decisions of the commissioner of public lands involving the prior right to purchase tidelands of the first class, if the appeal be not prosecuted, heard and determined, within two years from the date of the appeal, the attorney general shall, after thirty days' notice to the appellant of his intention so to do, move the court for a dismissal of the appeal, but nothing herein shall be construed to prevent the dismissal of such appeal at any time in the manner provided by law. [1971 c 81 § 139; 1927 c 255 § 125; RRS § 7797-125. Prior: 1901 c 62 §§ 1 through 7; 1897 c 89 § 52; 1895 c 178 § 82. Formerly RCW 79.08.030.]

79.01.612 Management of acquired lands—Rental—Repairs. The department of natural resources shall manage and control all lands acquired by the state by escheat or under chapter 79.66 RCW and all lands acquired by the state by deed of sale or gift or by devise, except such lands which are conveyed or devised to the state to be used for a particular purpose. The department shall lease the lands in the same manner as school lands. When the department determines to sell the lands, they shall be initially offered for sale at public auction as provided in this chapter. If the lands are not sold at public auction, the department may, with approval of the board of natural resources, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value and pay necessary marketing costs from the sale proceeds. Necessary marketing costs includes reasonable costs associated with advertising the property and paying commissions. The proceeds of the lease or sale of all such lands shall be deposited into the appropriate fund in the state treasury in the manner prescribed by law: *Provided*, That if the grantor in any such deed or the testator in case of a devise specifies that the proceeds of the sale or lease of such lands be devoted to a particular purpose such proceeds shall be so applied. The department may employ agents to rent any escheated, deeded, or devised lands,

or lands acquired under chapter 79.66 RCW, for such rental and time and in such manner as the department directs, but the property shall not be rented by such agent for a longer period than one year and no tenant is entitled to compensation for any improvement which he makes on such property. The agent shall cause repairs to be made to the property as the department directs, and shall deduct the cost thereof, together with such compensation and commission as the department authorizes, from the rentals of such property and the remainder which is collected shall be transmitted monthly to the department of natural resources. [1984 c 222 § 13; 1927 c 255 § 154; RRS § 7797-154. Formerly RCW 43.12.100.]

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Real property distributed to state by probate court decree, jurisdiction of commissioner of public lands over: RCW 11.08.220.

79.01.616 Prospecting and mining—Leases and permits for prospecting and contracts for mining valuable minerals and specified materials—Execution authorized—Lands subject to—Size of tracts. The department of natural resources may issue permits and leases for prospecting, and contracts for the mining of valuable minerals and specified materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any public lands belonging to or held in trust by the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. [1987 c 20 § 1; 1965 c 56 § 2; 1927 c 255 § 155; RRS § 7797-155. Prior: 1917 c 148 § 1; 1915 c 152 § 1; 1897 c 102 § 1. Formerly RCW 78.20.010, part, and 78.20.020.]

79.01.617 Prospecting and mining—Public auction of mining contracts. The department of natural resources may offer nonrenewable placer mining contracts by public auction for the mining of gold under terms set by the department. In the case of lands known to contain valuable minerals or specified materials in commercially significant quantities, the department may offer mining contracts by public auction. [1987 c 20 § 2.]

79.01.618 Prospecting and mining—Mineral leases, contracts, and permits—Rules. The department of natural resources may adopt rules necessary for carrying out the mineral leasing, contracting, and permitting provisions of RCW 79.01.616 through 79.01.651. Such rules shall be enacted under chapter 34.04 RCW. The department may amend or rescind any rules adopted under this section. The department shall publish these rules in pamphlet form for the information of the public. [1987 c 20 § 3; 1983 c 3 § 200; 1965 c 56 § 3.]

79.01.620 Prospecting and mining—Leases for mineral prospecting—Application—Fees—Rejection. Any person desiring to obtain a lease for mineral prospecting purposes upon any lands in which the mineral rights are owned or administered by the department

of natural resources, shall file in the proper office of the department an application or applications therefor, upon the prescribed form, together with application fees. The department may reject an application for a mineral prospecting lease when the department determines rejection to be in the best interests of the state, and in such case shall inform the applicant of the reason for rejection and refund the application fee. The department may also reject the application and declare the application fee forfeited should the applicant fail to execute the lease. [1987 c 20 § 4; 1965 c 56 § 4; 1927 c 255 § 156; RRS § 7797-156. Prior: 1917 c 148 § 2; 1901 c 151 §§ 1, 2; 1897 c 102 §§ 2, 5. Formerly RCW 78.20.010, part, and RCW 78.20.030.]

79.01.624 Prospecting and mining—Compliance with mineral rights reservations—Compensation for loss or damage to surface rights. Where the surface rights are held by a third party, the lessee shall not exercise the rights reserved by the state upon lands covered by the lessee's lease or contract until the lessee has provided the department with satisfactory evidence of compliance with the requirements of the state's mineral rights reservations. Where the surface rights are held by the state, the lessee shall not exercise its mineral rights upon lands covered by the lessee's lease or contract until the lessee has made satisfactory arrangements with the department to compensate the state for loss or damage to the state's surface rights. [1987 c 20 § 5; 1965 c 56 § 5; 1927 c 255 § 157; RRS § 7797-157. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 78.20.040.]

79.01.628 Prospecting and mining—Prospecting leases—Term of lease—Rental—Mining contract required for extraction for commercial sale or use—Annual prospecting work—Termination of lease. Leases for prospecting purposes may be for a term of up to seven years from the date of the lease. The lessee shall pay an annual lease rental as set by the board of natural resources. The annual lease rental shall be paid in advance. The lessee shall not have the right to extract and remove for commercial sale or use from the leased premises any minerals or specified materials found on the premises except upon obtaining a mining contract. The lessee shall perform annual prospecting work in cost amounts as set by the board of natural resources. The lessee may make payment to the department in lieu of the performance of annual prospecting work for up to three years during the term of the lease. Prospecting work performed must contribute to the mineral evaluation of the leased premises.

The lessee may at any time give notice of intent to terminate the lease if all of the covenants of the lease including reclamation are met. The notice of termination of lease shall be made by giving written notice together with copies of all information obtained from the premises. The lease shall terminate sixty days thereafter if all arrears and sums which are due under the lease up to the time of termination have been paid. [1987 c 20 § 6; 1965 c 56 § 6; 1945 c 103 § 1; 1927 c 255 § 158; RRS §

7797–158. Prior: 1897 c 102 §§ 4, 5. Formerly RCW 78.20.050.]

79.01.632 Prospecting and mining—Conversion of prospecting lease into contract—Preference—Time for application—Plans for development and reclamation—Development work—Termination of contract—Nonconversion, effect. The holder of any prospecting lease shall have a preference right to a mining contract on the premises described in the lease if application therefor is made to the department of natural resources at least one hundred eighty days prior to the expiration of the prospecting lease.

A lessee applying for a mining contract shall furnish plans for development leading toward production. The plans shall address the reclamation of the property. A mining contract shall be for a term of twenty years.

The first year of the contract and each year thereafter, the lessee shall perform development work in cost amounts as set by the board of natural resources. The lessee may make payment to the department in lieu of development work.

The lessee may at any time give notice of intent to terminate the contract if all of the covenants of the contract including reclamation are met. The notice of termination of contract shall be made by giving written notice together with copies of all information obtained from the premises. The contract shall terminate sixty days thereafter if all arrears and sums which are due under the contract up to the time of termination have been paid.

The lessee shall have sixty days from the termination date of the contract in which to remove improvements, except those necessary for the safety and maintenance of mine workings, from the premises without material damage to the land or subsurface covered by the contract. However, the lessee shall upon written request to the department be granted an extension where forces beyond the control of the lessee prevent removal of the improvements within sixty days.

Any lessee not converting a prospecting lease to a mining contract shall not be entitled to a new prospecting lease on the lease premises for one year from the expiration date of the prior lease. Such lands included in the prospecting lease shall be open to application by any person other than the prior lessee, and the lessee's agents or associates during the year period described above. [1987 c 20 § 7; 1965 c 56 § 7; 1927 c 255 § 159; RRS § 7797–159. Prior: 1901 c 151 § 4. Formerly RCW 78.20.060.]

79.01.633 Prospecting and mining—Lessee's rights and duties relative to owner of surface rights. Where the surface rights have been sold and the minerals retained by the state, the state's right of entry to these lands is hereby transferred and assigned to the lessee during the life of the lease or contract. No lessee shall commence any operation upon lands covered by his or her lease or contract until the lessee has complied with RCW 79.01.624. [1987 c 20 § 8; 1965 c 56 § 8.]

79.01.634 Prospecting and mining—Termination of lease or contract for default. The department of natural resources shall terminate and cancel a prospecting lease or mining contract upon failure of the lessee to make payment of the annual rental or royalties or comply with the terms and conditions of said lease or contract upon the date such payments and compliances are due. The lessee shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the lessee. Termination and cancellation shall become effective thirty days from the date of mailing said notice: *Provided*, That the department may, upon written request from the lessee, grant an extension of time in which to make such payment or comply with said terms and conditions. [1987 c 20 § 9; 1965 c 56 § 9.]

79.01.640 Prospecting and mining—Form, terms, and conditions of prospecting leases and mining contracts—Subcontracts. Prospecting leases or mining contracts referred to in chapter 79.01 RCW shall be as prescribed by, and in accordance with rules adopted by the department of natural resources.

The department may include in any mineral prospecting lease or mining contract to be issued under this chapter such terms and conditions as are customary and proper for the protection of the rights of the state and of the lessee not in conflict with this chapter, or rules adopted by the department.

Any lessee shall have the right to contract with others to work or operate the leased premises or any part thereof or to subcontract the same and the use of said land or any part thereof for the purpose of mining for valuable minerals or specified materials, with the same rights and privileges granted to the lessee. Notice of such contracting or subcontracting with others to work or operate the property shall be made in writing to the department. [1987 c 20 § 10; 1965 c 56 § 11; 1927 c 255 § 161; RRS § 7797–161. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 78.20:080.]

79.01.642 Prospecting and mining—Reclamation of premises. At time of termination for any mineral prospecting lease, permit, mining contract, or placer mining contract, the premises shall be reclaimed in accordance with plans approved by the department. [1987 c 20 § 11.]

79.01.644 Prospecting and mining—Mining contracts—Production royalties—Minimum royalty. Mining contracts entered into as provided in chapter 79.01 RCW shall provide for the payment to the state of production royalties as set by the board of natural resources. A lessee shall pay in advance annually a minimum royalty which shall be set by the board of natural resources. The minimum royalty shall be allowed as a credit against production royalties due during the contract year. [1987 c 20 § 12; 1965 c 56 § 12; 1959 c 257 § 38; 1945 c 103 § 2; 1927 c 255 § 162; Rem. Supp. 1945 § 7797–162. Prior: 1917 c 148 § 4; 1901 c 151 § 3; 1897 c 89 § 7. Formerly RCW 78.20.090.]

79.01.645 Prospecting and mining—Renewal of mining contracts. The lessee may apply for the renewal of a mining contract, except placer mining contracts issued pursuant to RCW 79.01.617, to the department within ninety days before the expiration of the contract. Upon receipt of the application, the department shall make the necessary investigation to determine whether the terms of the contract have been complied with, and if the department finds they have been complied with in good faith, the department shall renew the contract. The terms and conditions of the renewal contract shall remain the same except for royalty rates, which shall be determined by reference to then existing law. [1987 c 20 § 13.]

79.01.648 Prospecting and mining—Consolidation of mining contracts. The holders of two or more mining contracts may consolidate said contracts under a common management to permit proper operation of large scale developments. Notification of such consolidation shall be made to the department of natural resources, together with a statement of plans of operation and proposed consolidation. The department may thereafter make examinations and investigations and if it finds that such consolidation is not in the best interest of the state, it shall disapprove such consolidated operation. [1965 c 56 § 13; 1945 c 103 § 3 (adding a new section to 1927 c 255, section 162-1); Rem. Supp. 1945 § 7797-162a. Formerly RCW 78.20.100.]

79.01.649 Prospecting and mining—State may enter lands and examine property and records—Disclosure of information. Any person designated by the department of natural resources shall have the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and shall also have the right to examine such books, records, and accounts of the lessee as are directly connected with the determination of royalties on the property under lease from the state but it shall be unlawful for any person so appointed to disclose any information thus obtained to any person other than the departmental officials and employees, except the attorney general and prosecuting attorneys of the state. [1965 c 56 § 14.]

79.01.650 Prospecting and mining—State may dispose of materials not covered by prospecting lease or mining contract—Disposition of timber. The state shall have the right to sell or otherwise dispose of any surface resource, timber, rock, gravel, sand, silt, coal, or hydrocarbons, except minerals or materials specifically covered by a mineral prospecting lease or mining contract, found upon the land during the period covered by said lease or contract. The state shall also have the right to enter upon such land and remove same, and shall not be obliged to withhold from any sale any timber for prospecting or mining purposes. The lessee shall, upon payment to the department of natural resources, have the right to cut and use timber found on the leased premises for mining purposes as provided in rules

adopted by the department. [1987 c 20 § 14; 1965 c 56 § 15.]

79.01.651 Prospecting and mining—Recreational mineral prospecting permits. The department may issue permits for recreational mineral prospecting in designated areas containing noneconomic mineral deposits. The term of a permit shall not exceed one year. Designated areas, equipment allowed, methods of prospecting, as well as other appropriate permit conditions, shall be set in rules adopted by the department. Fees shall be set by the board of natural resources. [1987 c 20 § 15.]

79.01.652 Coal mining—Leases and option contracts authorized. The commissioner of public lands is authorized to execute option contracts and leases for the mining and extraction of coal from any public lands of the state, or to which it may hereafter acquire title, or from any lands sold or leased by the state the minerals of which have been reserved by the state. [1927 c 255 § 163; RRS § 7797-163. Prior: 1925 ex.s. c 155 § 1. Formerly RCW 78.24.010.]

79.01.656 Coal mining—Application for option contract—Fee. Any citizen of the United States believing coal to exist upon any of the lands described in the preceding section may apply to the commissioner of public lands for an option contract for any amount not exceeding one section for prospecting purposes, such application to be made by legal subdivision according to the public land surveys. The applicant shall pay to the commissioner of public lands, at the time of filing his application, the sum of one dollar an acre for the lands applied for, but in no case less than fifty dollars. In case of the refusal of the commissioner to execute an option contract for the lands, any remainder of the sum so paid, after deducting the expense incurred by the commissioner in investigating the character of the land, shall be returned to the applicant. [1927 c 255 § 164; RRS § 7797-164. Prior: 1925 ex.s. c 155 § 2. Formerly RCW 78.24.020.]

79.01.660 Coal mining—Investigation—Grant of option contract—Rights and duties of option contract holder. Upon the filing of any such application, the commissioner of public lands shall forthwith investigate the character of the lands applied for, and if, from such investigation, he deems it to the best interests of the state he shall enter into an option contract with the applicant.

The holder of any option contract shall be entitled, during the period of one year from the date thereof, to enter upon the lands and carry on such work of exploration, examination and prospecting for coal as may be necessary to determine the presence of coal upon the lands and the feasibility of mining the same. He shall have the right to use such timber found upon the lands and owned by the state as may be necessary for steam purposes and timbering in the examination and prospecting of such lands: *Provided*, That this provision shall not be construed to require the state to withhold

any such timber from sale. No coal shall be removed from such lands during the period of such option contract except for samples and testing. At the expiration of the option contract, the applicant shall fill or cover in a substantial manner all prospect holes and shafts, or surround the same with substantial fences, and shall file with the commissioner of public lands a report showing in detail the result of his investigation and prospecting. [1927 c 255 § 165; RRS § 7797-165. Prior: 1925 ex.s. c 155 § 3. Formerly RCW 78.24.030.]

79.01.664 Coal mining—Action to determine damage to surface owner or lessee—Commencement of option contract delayed. In the case of lands which the state may have sold or leased and reserved the mineral rights therein, if the holder of any option contract or lease shall be unable to agree with the owner or prior lessee of the lands, he shall have a right of action in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to such owner or lessee of the land by reason of the entry thereon and prospecting for or mining coal, as the case may be. In the event of any such action, the term of the option contract or lease shall begin thirty days after the entry of the final judgment in such action. [1927 c 255 § 166; RRS § 7797-166. Prior: 1925 ex.s. c 155 § 4. Formerly RCW 78.24.070.]

79.01.668 Coal mining—Lease—Application, terms, royalties. At any time during the life of the option contract, the holder thereof may apply to the commissioner of public lands for a coal mining lease of the lands included therein, or such portion thereof as he may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the commissioner of public lands, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances and appurtenances in connection with the mining operations. Such lease shall provide for the payment to the state of a royalty, according to the grade of coal, for each ton of two thousand pounds of merchantable coal taken from the lands, as follows: For lignite coal of the class commonly found in Lewis and Thurston counties, not less than ten cents per ton; for subbituminous coal, not less than fifteen cents per ton; for high grade bituminous and coking coals, not less than twenty cents per ton; but such lease shall provide for the payment each year of a minimum royalty of not less than one nor more than ten dollars an acre for the lands covered thereby: *Provided*, That the commissioner of public lands may agree with the lessee that said minimum royalty shall be graduated for the different years of said lease so that a lower minimum royalty shall be paid during the earlier years of the term. The minimum royalty fixed in the lease shall be paid in advance each year, and the lessee, at stated periods during the term of the lease, fixed by the commissioner, shall furnish to the

commissioner of public lands a written report under oath showing the amount of merchantable coal taken from the land during the period covered by such report and shall remit therewith such sum in excess of the minimum royalty theretofore paid for the current year as may be payable as royalty for the period covered by such report.

The commissioner shall incorporate in every lease such provisions and conditions not inconsistent with the provisions of this chapter and not inconsistent with good coal mining practice as he shall deem necessary and proper for the protection of the state, and, in addition thereto, the commissioner shall be empowered to prescribe such rules and regulations, not inconsistent with this chapter and not inconsistent with good mining practice, governing the manner and methods of mining as in his judgment are necessary and proper. [1985 c 459 § 1; 1927 c 255 § 167; RRS § 7797-167. Prior: 1925 ex.s. c 155 § 5. Formerly RCW 78.24.040.]

Severability—1985 c 459: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 459 § 10.]

79.01.672 Coal mining—Lease without option contract. In the case of lands known to contain workable coal, the commissioner may, in his discretion, issue coal mining leases under the foregoing provisions although no option contract has been theretofore issued for such lands. [1927 c 255 § 168; RRS § 7797-168. Prior: 1925 ex.s. c 155 § 6. Formerly RCW 78.24.050.]

79.01.676 Coal mining—Inspection of works and records—Information confidential. The commissioner of public lands or any person designated by him shall have the right at any time to enter upon the lands and inspect and examine the structures, works and mines situated thereon, and shall also have the right to examine such books, records and accounts of the lessee as are directly connected with the operation of the mine on the property under lease from the state; but it shall be unlawful for the commissioner or any person so appointed to disclose any information thus obtained to any person other than the commissioner of public lands and his employees, except the attorney general and prosecuting attorneys of the state. [1927 c 255 § 169; RRS § 7797-169. Prior: 1925 ex.s. c 155 § 7. Formerly RCW 78.24.060.]

Coal mining code: Chapter 78.40 RCW.

79.01.680 Coal mining—Use and sale of materials from land. The state shall have the right to sell or otherwise dispose of any timber, stone or other valuable materials, except coal, found upon the land during the period covered by any option contract, or lease issued under the foregoing provisions, with the right to enter upon such lands and cut and remove the same, and shall not be obliged to withhold from sale any timber for coal mining or prospecting purposes: *Provided*, That the lessee shall be permitted to use in his mining operations any timber found upon the land, first paying therefor to the commissioner of public lands the value thereof as

fixed by said commissioner: *And provided further*, That any bill of sale for the removal of timber, stone or other material given subsequent to the coal lease shall contain provisions preventing any interference with the operations of the coal lease. [1927 c 255 § 170; RRS § 7797-170. Prior: 1925 ex.s. c 155 § 8. Formerly RCW 78.24.080.]

79.01.684 Coal mining—Suspension of mining—Termination of lease. Should the lessee for any reason, except strikes or inability to mine or dispose of his output without loss, suspend mining operations upon the lands included in his lease, or upon any contiguous lands operated by him in connection therewith, for a period of six months, or should the lessee for any reason suspend mining operations upon the lands included in his lease or in such contiguous lands for a period of twelve months, the commissioner of public lands may, at his option, cancel the lease, first giving thirty days' notice in writing to the lessee.

The lessee shall have the right to terminate the lease after thirty days' written notice to the commissioner of public lands and the payment of all royalties and rentals then due. [1927 c 255 § 171; RRS § 7797-171. Prior: 1925 ex.s. c 155 § 9. Formerly RCW 78.24.090.]

79.01.688 Coal mining—Condition of premises on termination of lease—Removal of personalty. Upon the termination of any lease issued under the foregoing provisions, the lessee shall surrender the lands and premises and leave in good order and repair all shafts, slopes, airways, tunnels and watercourses then in use. Unless the coal therein is exhausted, he shall also, as far as it is reasonably practicable so to do, leave open to the face all main entries then in use so that the work of further development and operation may not be unnecessarily hampered. He shall also leave on the premises all buildings and other structures, but shall have the right to, without damage to such buildings and structures, remove all tracks, machinery and other personal property. [1927 c 255 § 172; RRS § 7797-172. Prior: 1925 ex.s. c 155 § 10. Formerly RCW 78.24.100.]

79.01.692 Coal mining—Re-lease—Procedure—Preference to lessee. If at the expiration of any lease for the mining and extraction of coal or any renewal thereof the lessee desires to re-lease the lands covered thereby, he may make application to the commissioner of public lands for a re-lease. Such application shall be in writing and under oath, setting forth the extent, character and value of all improvements, development work and structures existing upon the land. The commissioner of public lands may on the filing of such application cause the lands to be inspected, and if he deems it for the best interests of the state to re-lease said lands, he shall fix the royalties for the ensuing term in accordance with the foregoing provisions relating to original leases, and issue to the applicant a renewal lease for a further term; such application for a release when received from the lessee, or successor of any lessee, who has in good faith developed and improved the property

in a substantial manner during his original lease to be given preference on equal terms against the application of any new applicant. [1927 c 255 § 173; RRS § 7797-173. Prior: 1925 ex.s. c 155 § 11. Formerly RCW 78.24.110.]

79.01.696 Coal mining—Waste prohibited. It shall be unlawful for the holder of any coal mining option contract, or any lessee, to commit any waste upon the lands embraced therein, except as may be incident to his work of prospecting or mining. [1927 c 255 § 174; RRS § 7797-174. Prior: 1925 ex.s. c 155 § 12. Formerly RCW 78.24.120.]

79.01.700 Oil and gas leases on state lands. See chapter 79.14 RCW.

79.01.704 Witnesses—Compelling attendance, production of books, etc. In all hearings pertaining to public lands of the state, as provided by this chapter, the board of natural resources, or the commissioner of public lands, as the case may be, shall, in its or his discretion have power to issue subpoenas and compel thereby the attendance of witnesses and the production of books and papers, at such time and place as may be fixed by the board, or the commissioner, to be stated in the subpoena and to conduct the examination thereof.

Said subpoena may be served by the sheriff of any county, or by any officer authorized by law to serve process, or by any person eighteen years of age or over, competent to be a witness, but who is not a party to the matter in which the subpoena is issued.

Each witness subpoenaed by the board, or commissioner, as a witness on behalf of the state, shall be allowed the same fees and mileage as provided by law to be paid witnesses in courts of record in this state, said fees and mileage to be paid by warrants on the general fund from the appropriation for the office of the commissioner of public lands.

Any person duly served with a subpoena, as herein provided, and who shall fail to obey the same, without legal excuse, shall be considered in contempt, and the board, or commissioner, shall certify the facts thereof to the superior court of the county in which such witness may reside, and upon legal proof thereof, such witness shall suffer the same penalties as are now provided in like cases for contempt of court and the certificate of the board, or commissioner, shall be considered by the court as prima facie evidence of the guilt of the party charged with contempt. [1971 ex.s. c 292 § 54; 1959 c 257 § 39; 1927 c 255 § 186; RRS § 7797-186. Prior: 1897 c 89 § 59; 1895 c 223 § 93. Formerly RCW 79.08.010.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Contempts: Chapters 7.20 and 9.23 RCW.

Punishment for contempt: RCW 2.28.020 and 5.56.061 through 5.56.080.

Witness fees, generally: Chapter 2.40 RCW.

79.01.708 Maps and plats—Record and index—Public inspection. All maps, plats and field notes of surveys, required to be made by this chapter shall, after

approval by the board of state land commissioners, or the commissioner of public lands, as the case may be, be deposited and filed in the office of the commissioner of public lands, who shall keep a careful and complete record and index of all maps, plats and field notes of surveys in his possession, in well bound books, which shall at all times be open to public inspection. [1927 c 255 § 187; RRS § 7797-187. Formerly RCW 43.12.110.]

79.01.712 Seal. All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the board of state land commissioners, or the commissioner of public lands, as provided in this chapter, shall be authenticated by a seal whereon shall be the vignette of George Washington, with the words "Seal of the commissioner of public lands, State of Washington." [1927 c 255 § 188; RRS § 7797-188. Formerly RCW 43.65.070.]

79.01.720 Fees. The commissioner of public lands for services performed by him, may charge and collect fees as determined by the board of natural resources for each category of services performed based on costs incurred. [1979 ex.s. c 109 § 18; 1959 c 153 § 1; 1927 c 255 § 190; RRS § 7797-190. Formerly RCW 43.12.120.]

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.724 Fee book—Verification. The commissioner of public lands shall keep a fee book, in which shall be entered all fees received by him, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book shall be verified monthly by his affidavit entered therein, and all fees collected by him shall be paid into the state treasury to the *RMCA within the general fund and the receipt of the state treasurer taken therefor and retained in the office of the commissioner of public lands as a voucher. [1979 ex.s. c 109 § 19; 1927 c 255 § 191; RRS § 7797-191. Formerly RCW 43.12.130.]

Reviser's note: *(1) "RMCA," apparently refers to the resource management cost account created in RCW 79.64.020. See RCW 79.01.088.

(2) This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.01.728 Assessments paid to be added to purchase price of land. When any public land of the state as defined in this chapter shall have been assessed for local improvements, or for benefits, by any municipal corporation authorized by law to assess the same, and such assessments have been paid by the state, and such land is offered for sale, there shall be added to the value of such land, appraised as provided by this chapter, the amount of assessments paid by the state, which amount so added shall be paid by the purchaser, in case of sale, in equal annual installments at the same time, and with the same

rate of interest upon deferred payments, as the installments of the purchase price are paid, in addition to the amounts otherwise due to the state for said land, and no deed shall be executed until such assessments have been paid. [1927 c 255 § 192; RRS § 7797-192. Prior: 1925 ex.s. c 180 § 1; 1909 c 154 § 7; 1907 c 73 § 3; 1905 c 144 § 5. Formerly RCW 79.44.110.]

Assessments paid by state to be added to purchase price of land: RCW 79.44.095.

79.01.732 Appearance before United States land offices. The commissioner of public lands is authorized and directed to appear before the United States land offices in all cases involving the validity of the selections of any lands granted to the state, and to summon witnesses and pay necessary witness fees and stenographer fees in such contested cases. [1927 c 255 § 193; RRS § 7797-193. Formerly RCW 43.12.070.]

79.01.736 Duty of attorney general—Commissioner may represent state. It shall be the duty of the attorney general, to institute, or defend, any action or proceeding to which the state, or the commissioner of public lands, or the board of natural resources, is or may be a party, or in which the interests of the state are involved, in any court of this state, or any other state, or of the United States, or in any department of the United States, or before any board or tribunal, when requested so to do by the commissioner of public lands, or the board of natural resources, or upon his own initiative.

The commissioner of public lands is authorized to represent the state in any such action or proceeding relating to any public lands of the state. [1959 c 257 § 40; 1927 c 255 § 194; RRS § 7797-194. Prior: 1909 c 223 § 7; 1897 c 89 § 65; 1895 c 178 § 100. Formerly RCW 79.08.020.]

79.01.740 Reconsideration of official acts. The department of natural resources may review and reconsider any of its official acts relating to state lands until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [1982 1st ex.s. c 21 § 177; 1927 c 255 § 195; RRS § 7797-195. Formerly RCW 43.65.080.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.01.744 Reports. (1) It shall be the duty of the commissioner of public lands to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that he may deem advisable.

(2) The commissioner of public lands shall provide a comprehensive biennial report to reflect the previous fiscal period. The report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects,

intergovernmental agreements, the adopted sustainable harvest compared to the sales program, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resources managed and the recreational and commercial utilization. The report shall be given to the chairs of the house and senate committees on ways and means and the house and senate committees on natural resources, including one copy to the staff of each of the committees, and shall be made available to the public. [1987 c 505 § 76; 1985 c 93 § 3; 1927 c 255 § 196; RRS § 7797–196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 43.12.150.]

79.01.748 Trespasser guilty of larceny, when. Every person who wilfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, shall be guilty of larceny. [1927 c 255 § 197; RRS § 7797–197. Prior: 1889–90 pp 124–125 §§ 1, 4. Formerly RCW 79.40.010.]

79.01.752 Lessee or contract holder guilty of misdemeanor, when. Every person being in lawful possession of any public lands of the state, under and by virtue of any lease or contract of purchase from the state, cuts down, destroys or injures, or causes to be cut down, destroyed or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral or other valuable material, or causes the same to be done, or otherwise injures, defaces or damages, or causes to be injured, defaced or damaged, any such lands unless expressly authorized so to do by the lease or contract under which he holds possession of such lands, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor. [1927 c 255 § 198; RRS § 7797–198. Prior: 1899 c 34 §§ 1 through 3. Formerly RCW 79.40.020.]

79.01.756 Removal of timber, manufacture into articles—Treble damages. Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he holds possession of such lands, or by the provisions of law under and by virtue of which such bill of sale, lease or contract was issued, shall be liable to the

state in treble the value of the timber or other articles so cut, removed or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in and to any article into which said timber is manufactured. [1927 c 255 § 199; RRS § 7797–199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.40.030.]

Firewood on state lands: Chapter 76.20 RCW.

Injunction to prevent waste on public land: RCW 64.12.050.

Injury to or removing trees, etc.—Damages: RCW 64.12.030.

Penalty for destroying native flora: RCW 47.40.080.

79.01.760 Trespass, waste, damages—Prosecutions. The commissioner of public lands is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of, the same, to be commenced as is provided by law. [1927 c 255 § 200; RRS § 7797–200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.40.040.]

Waste and trespass: Chapter 64.12 RCW.

79.01.770 School districts, institutions of higher education, purchase of leased lands with improvements by—Authorized—Exception—Price. Notwithstanding the provisions of RCW 79.01.096 or any other provision of law, any school district or institution of higher education leasing land granted to the state by the United States and on which land such district or institution has placed improvements as defined in RCW 79.01.036 shall be afforded the opportunity by the department of natural resources at any time to purchase such land, excepting land over which the department retains management responsibilities, for the purposes of schoolhouse construction and/or necessary supporting facilities or structures at the appraised value thereof less the value that any improvements thereon added to the value of the land itself at the time of the sale thereof. [1985 c 200 § 1; 1982 1st ex.s. c 31 § 1; 1980 c 115 § 8; 1971 ex.s. c 200 § 2.]

Severability—1980 c 115: See note following RCW 28A.58.040.

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.774 School districts, institutions of higher education, purchase of leased lands with improvements by—Certain purchases classified—Payable out of common school construction fund. The purchases authorized under RCW 79.01.770 shall be classified as for the construction of common school plant facilities under chapter 28A.47 RCW and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.40.100 if the school district involved was under emergency school construction classification as established by the state board of education at any time during the period of its lease of state lands. [1971 ex.s. c 200 § 3.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.778 School districts, institutions of higher education, purchase of leased lands with improvements

by—**Extension of contract period, when—Limitation.** In those cases where the purchases, as authorized by RCW 79.01.770 and 79.01.774, have been made on a ten year contract, the board of natural resources, if it deems it in the best interest of the state, may extend the term of any such contract to not to exceed an additional ten years under such terms and conditions as the board may determine. [1971 ex.s. c 200 § 4.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.780 Determination if lands purchased or leased by school districts or institutions of higher education are used as school sites—Reversion, when. Notwithstanding any other provisions of law, annually the board of natural resources shall determine if lands purchased or leased by school districts or institutions of higher education under the provisions of RCW 79.01.096 and 79.01.770 are being used for school sites. If such land has not been used for school sites for a period of seven years the title to such land shall revert to the original trust for which it was held. [1971 ex.s. c 200 § 5.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.784 Urban lands—Cooperative planning, development. The purpose of this section is to foster cooperative planning between the state of Washington, the department of natural resources, and local governments as to state-owned lands under the department's jurisdiction situated in urban areas.

At least once a year, prior to finalizing the department's urban land leasing action plan, the department and applicable local governments shall meet to review state and local plans and to coordinate planning in areas where urban lands are located. The department and local governments may enter into formal agreements for the purpose of planning the appropriate development of these state-owned urban lands.

The department shall contact those local governments which have planning, zoning, and land-use regulation authority over areas where urban lands under its jurisdiction are located so as to facilitate these annual or other meetings.

"Urban lands" as used in this section shall mean those areas which within ten years are expected to be intensively used for locations of buildings, structures, and usually have urban governmental services.

"Local government" as used in this section shall mean counties, cities, and towns having planning and land-use regulation authority. [1979 ex.s. c 56 § 1.]

79.01.790 Findings—Damage to timber. From time to time timber on state land is damaged by events such as fire, wind storms, and flooding. After such events the timber becomes very susceptible to loss of value and quality due to rot and disease. To obtain maximum value for the state, it is important to sell any

damaged timber as fast as possible while providing ample protection for the physical environment and recognizing the sensitivity of removing timber from certain locations. [1987 c 126 § 1.]

79.01.795 Sale of damaged timber. When the department finds timber on state land that is damaged by fire, wind, flood, or from any other cause, it shall determine if the sale of the damaged timber is in the best interest of the trust for which the land is held. If selling the timber is in the best interest of the trust, the department shall proceed to offer the timber for sale within a period not to exceed seven months from the date of first identifying the damaged timber. In determining if the sale is in the best interest of the trust the department shall consider the net value of the timber and relevant elements of the physical and social environment. If selling the timber is not in the best interest of the trust, the department shall not offer it for sale until such time as in the department's determination it is in the trust's best interest.

If elements of the physical or social environment extend the time required to prepare the timber for sale beyond seven months from the date of first identifying the damaged timber, the department shall prepare the timber for sale at the earliest time practicable. [1987 c 126 § 2.]

79.01.900 Construction—1927 c 255. This chapter shall not be construed to affect any vested right of any person, firm or corporation, acquired under existing laws, in any public lands of the state, or any preference right to purchase or lease the same, or any findings, rulings or decisions of the commissioner of public lands, or the board of state land commissioners, under existing laws, or any cases now pending before the board of state land commissioners, or the commissioner of public lands, or in any court, but the same shall be continued and determined in the manner provided in existing laws and in this chapter. [1927 c 255 § 201; RRS § 7797-201.]

Chapter 79.08 GENERAL PROVISIONS

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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

Facilitating recovery from Mt. St. Helens eruption—Scope of state agency action: RCW 43.01.210.

Land use data bank—Contents, source—Consultants authorized—Use: RCW 79.68.120.

Multiple use concept in management and administration of state-owned lands: Chapter 79.68 RCW.

University of Washington, lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands: RCW 28B.20.328.

Washington State University, lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands: RCW 28B.30.325.

79.08.015 Exchange of land under control of department of natural resources—Public notice—News release—Hearing—Procedure. Before the department of natural resources presents a proposed exchange to the board of natural resources involving an exchange of any lands under the administrative control of the department of natural resources, the department shall hold a public hearing on the proposal in the county where the state land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such

hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state-owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [1979 c 54 § 1; 1975 1st ex.s. c 107 § 2.]

Exchange of state land by parks and recreation commission, procedure: RCW 43.51.215.

79.08.070 University demonstration forest and experiment station. For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the commissioner of public lands with the advice and approval of the state board of land commissioners, all acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 9 of chapter 122 of the act of March 14th, 1893, enacted by the legislature of Washington, being entitled, "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," for all or any portion of such lands as may be acquired by the state under and by virtue of chapter 102, of the Session Laws of Washington for the year 1913, being: "An act relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol buildings and other purposes providing for the completion of such grants and the relinquishment of certain granted lands; and making an appropriation," approved March 18th, 1913, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. Said board of regents and commissioner of public lands with the advice and approval aforesaid are hereby authorized to execute such agreements, writings or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the commissioner of public lands and one to be delivered to the said board of regents. Said exchange shall be made upon the basis of equal values to

be determined by careful valuation of the areas to be exchanged. [1917 c 66 § 1; RRS § 7848.]

Reviser's note: 1893 c 122 § 9 referred to herein reads as follows: "That 100,000 acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington."

79.08.080 Grant of lands for city park or playground purposes. Whenever application is made to the commissioner of public lands by any incorporated city or town or metropolitan park district for the use of any state owned tide or shore lands within the corporate limits of said city or town or metropolitan park district for municipal park and/or playground purposes, he shall cause such application to be entered in the records of his office, and shall then forward the same to the governor, who shall appoint a committee of five representative citizens of said city or town, in addition to the commissioner of public lands and the *director of conservation and development, both of whom shall be ex officio members of said committee, to investigate said lands and determine whether they are suitable and needed for such purposes; and, if they so find, the land commissioner shall certify to the governor that the property shall be deeded to the said city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of such lands to said city or town or metropolitan park district for said purposes for so long as it shall continue to hold, use and maintain said lands for such purposes. [1939 c 157 § 1; RRS § 7993-1.]

***Reviser's note:** Director of conservation and development, see note following title digest.

79.08.090 Exchange of lands to secure city parks and playgrounds. In the event there are no state owned tide or shore lands in any such city or town or metropolitan park district suitable for such purposes and the committee finds other lands therein which are suitable and needed therefor, the commissioner of public lands is hereby authorized to secure the same by exchanging state owned tide or shore lands in the same county of equal value therefor, and the use of the lands so secured shall be conveyed to any such city or town or metropolitan park district as provided for in RCW 79.08.080. In all such exchanges the commissioner of public lands shall be and he is hereby authorized and directed, with the assistance of the attorney general, to execute such agreements, writings, relinquishments and deeds as are necessary or proper for the purpose of carrying such exchanges into effect. Upland owners shall be notified of such state owned tide or shore lands to be exchanged. [1939 c 157 § 2; RRS § 7993-2.]

79.08.100 Director of conservation to assist city parks. The *director of conservation and development, in addition to serving as an ex officio member of any such committee, is hereby authorized and directed to assist any such city or town or metropolitan park district in the development and decoration of any lands so conveyed

and to furnish trees, grass, flowers and shrubs therefor. [1939 c 157 § 3; RRS § 7993-3.]

***Reviser's note:** Director of conservation and development, see note following title digest.

79.08.102 Use of public lands for state or city park purposes—Regents' consent, when. The department of natural resources is hereby authorized to withdraw from sale or lease, and reserve for state or city park purposes, public lands selected by the state parks and recreation commission, for such time as it shall determine will be for the best interests of the state and any particular fund for which said public lands are being held in trust: *Provided*, None of the lands selected under the provisions of section 3, chapter 91, Laws of 1903, shall be withdrawn or reserved hereunder without the consent of the board of regents of the University of Washington; except that the consent of the board of regents of the University of Washington shall not be required with regard to any such lands which are situated within the corporate limits of any city or town and are presently zoned for residential use. [1969 ex.s. c 129 § 2; 1951 c 26 § 1.]

Reviser's note: 1903 c 91 § 3 referred to herein is not codified. See Index of Public Land Acts of Special or Historical Nature not codified in RCW following Title 79 RCW digest.

79.08.104 Use of public lands for state or city park purposes—Rental—Deposit of rent. The land commissioner and the state parks and recreation commission shall fix a yearly reasonable rental for the use of public lands reserved for state park purposes, which shall be paid by the commission to the land commissioner for the particular fund for which the lands had been held in trust, and which rent shall be transmitted to the state treasurer for deposit in such fund. [1951 c 26 § 2.]

79.08.106 Use of public lands for state or city park purposes—Removal of timber—Consent—Compensation. No merchantable timber shall be cut or removed from lands reserved for state park purposes without the consent of the land commissioner and without payment to the particular fund for which the lands are held in trust, the reasonable value thereof as fixed by the commissioner. [1951 c 26 § 3.]

79.08.1062 State lands used for state parks—Trust lands, payment of full market value rental—Other lands, rent free. The parks and recreation commission shall pay to the department of natural resources the full market value rental for state-owned lands acquired in trust from the United States that are used for state parks. All other state lands used by the parks and recreation commission for state parks shall be rent free. [1967 ex.s. c 63 § 4.]

79.08.1064 State lands used for state parks—Trust lands—Determination of full market value by board of natural resources. The full market value shall be determined by the board of natural resources for trust lands used for state park purposes. [1969 ex.s. c 189 § 1; 1967 ex.s. c 63 § 5.]

79.08.1066 State lands used for state parks—Trust lands—Full market value rental defined—Factor in determination. The full market value rental for trust lands used by the parks and recreation commission shall be a percentage of the full market value of the land and the board of natural resources shall consider in its deliberations the average percentage of return realized by the state during the preceding fiscal biennium on the invested common school permanent fund. [1969 ex.s. c 189 § 2; 1967 ex.s. c 63 § 6.]

79.08.1069 State lands used for state parks—Certain funds appropriated for rental to be deposited without deduction for management purposes. Any funds appropriated to the state parks and recreation commission for payment of rental for use of state lands reserved for state park purposes during the 1969–71 biennium and received by the department of natural resources shall be deposited by the department to the applicable trust land accounts without the deduction normally applied to such revenues for management purposes. [1969 ex.s. c 189 § 3.]

79.08.1072 Utilization of public lands for outdoor recreational and other beneficial public uses—State agency cooperation. In order to maximize outdoor recreation opportunities for the people of the state of Washington and allow for the full utilization of state owned land, all state departments and agencies are authorized and directed to cooperate together in fully utilizing the public lands. All state departments and agencies, vested with statutory authority for utilizing land for outdoor recreation or other beneficial public uses, are authorized and directed to apply to another state department or agency holding suitable public lands for permission of use. The department or agency applied to is authorized and directed to grant permission of use to the applying department or agency if the public use of the public land would be consistent with the existing and continuing principal uses. Trust lands may be withdrawn for outdoor recreation purposes from sale or lease for other purposes by the department of natural resources pursuant to this section subject to the constraints imposed by the Washington state Constitution and the federal enabling statute. The decision regarding such consistency with existing and continuing principal uses shall be made by the agency owning or controlling such lands and which decision shall be final. [1969 ex.s. c 247 § 1.]

79.08.1074 Department estopped from certain actions respecting state parks without concurrence of commission. The department of natural resources shall not rescind the withdrawal of public land in any existing and future state park nor sell any timber or other valuable material therefrom or grant any right of way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.

The department of natural resources shall have reasonable access across such lands in order to reach other

public lands administered by the department of natural resources. [1969 ex.s. c 247 § 2.]

State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Board to determine most beneficial use in accordance with policy: RCW 79.08.1078.

79.08.1078 State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with policy. (1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources or by other state agencies.

(2) The department shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. Its decision will be conclusive as to the matter: *Provided, however,* That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community development. [1985 c 6 § 24; 1969 ex.s. c 129 § 1.]

Purchase of withdrawn state trust lands by state parks and recreation commission: RCW 43.51.270, 43.51.280.

Reconveyance of state forest land to counties for park purposes: RCW 76.12.072 through 76.12.075.

79.08.108 Exchange of lands to secure state park lands. For the purpose of securing and preserving certain lands for state park purposes, the commissioner of public lands shall, with the advice and approval of the board of state land commissioners, exchange any state lands of equal value for any lands, located in the following described tracts, which may be selected and requested by the state parks and recreation commission for state park purposes: Government lots 1, 2, 3, and 4 of section 20, all of section 21, government lot 1 of section 22, government lot 1 of section 29, the north half of the north half of section 28, and government lot 1 of section 27, all in township 13 north, range 11 west, W.M. in Pacific county; the northeast quarter of the southwest quarter

and the south half of the southwest quarter of section 24, township 2 north, range 6 east, W.M., in Skamania county; and the southeast quarter of section 15, the south half of the northwest quarter and the southwest quarter of section 14, the southwest quarter of section 11, the west half of section 23, the southeast quarter, the west half and the northeast quarter of the northeast quarter of section 22, the northwest quarter of section 26, and the northeast quarter of section 27, all in township 28 north, range 45 east, W.M. in Spokane county; the southwest quarter and the west half of the southeast quarter of section 16, the east half of the east half of section 20, the northeast quarter of the northeast quarter of section 29, the northwest quarter, the west half of the southwest quarter and government lots 1, 2, 3, 4 and 5 of section 21, including tidelands and government lots 1 and 2 of section 28, including tidelands, all in township 25 north, range 2 west, W.M. in Jefferson county. The commissioner shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to effect such exchanges. When such exchanges have been effected, the lands so acquired in exchange shall be reserved by the commissioner of public lands for state park purposes in accordance with RCW 79.08.102, 79.08.104 and 79.08.106. [1953 c 96 § 1.]

Certification of deed to governor: RCW 79.01.220.

79.08.109 Exchange of lands to secure private lands for parks and recreation purposes. For the purpose of securing and preserving privately owned lands for parks and recreation purposes, the department of natural resources is authorized, with the advice and approval of the state board of natural resources, to exchange any state lands of equal value for such lands. Lands acquired by exchange as herein provided shall be withdrawn from lease and sale and reserved for park and recreation purposes. [1967 ex.s. c 64 § 2.]

Construction—Severability—1967 ex.s. c 64: See notes following RCW 43.30.300.

Outdoor recreation facilities, construction and maintenance by department of natural resources: RCW 43.30.300.

79.08.110 Relinquishment to United States, in certain cases of reserved mineral rights. Whenever the state shall have heretofore sold or may hereafter sell any state lands and issued a contract of purchase or executed a deed of conveyance therefor, in which there is a reservation of all oils, gases, coal, ores, minerals and fossils of every kind and of rights in connection therewith, and the United States of America shall have acquired for governmental purposes and uses all right, title, claim and interest of the purchaser, or grantee, or his successors in interest or assigns, in or to said contract or the land described therein, except such reserved rights, and no oils, gases, coal, ores, minerals or fossils of any kind have been discovered or are known to exist in or upon such lands, the commissioner of public lands may, if he deems advisable, cause to be prepared a deed of conveyance to the United States of America of such reserved rights,

and certify the same to the governor in the manner provided by law for deeds to state lands, and the governor shall be, and hereby is authorized to execute, and the secretary of state to attest, a deed of conveyance for such reserved rights to the United States of America. [1931 c 105 § 1; RRS § 8124-1.]

Certification of deed to governor: RCW 79.01.220.

79.08.120 Leases to United States for national defense. State lands may be leased to the United States for national defense purposes at the fair rental value thereof as determined by the commissioner of public lands, for a period of five years or less. Such leases may be made without competitive bidding at public auction and without payment in advance by the United States government of the first year's rental. Such leases otherwise shall be negotiated and arranged in the same manner as other leases of state lands. [1941 c 66 § 1; Rem. Supp. 1941 § 8122-1.]

79.08.140 Prospecting leases and contracts on state lands. See RCW 79.01.616 through 79.01.648.

79.08.150 Option contracts and coal leases on state lands. See RCW 79.01.652 through 79.01.696.

79.08.160 Oil and gas leases on state lands. See chapter 79.14 RCW.

79.08.170 Transfer of county auditor's duties to county treasurer. The duties of the county auditor in class AA and class A counties with regard to sales and leases of the state lands dealt with under Title 79 RCW except RCW 79.01.100, 79.01.104, and 79.94.040 are transferred to the county treasurer. [1983 c 3 § 201; 1955 c 184 § 1.]

79.08.180 Exchange of state lands—Additional purposes—Conditions. The department of natural resources, with the approval of the board of natural resources, may exchange any state land and any timber thereon for any land of equal value in order to:

- (1) Facilitate the marketing of forest products of state lands;
- (2) Consolidate and block-up state lands;
- (3) Acquire lands having commercial recreational leasing potential;
- (4) Acquire county-owned lands;
- (5) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.01.784; or
- (6) Acquire any other lands when such exchange is determined by the board of natural resources to be in the best interest of the trust for which the state land is held.
- (7) Land exchanged under this section shall not be used to reduce the publicly owned forest land base.
- (8) The board of natural resources shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the

land exchange. [1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1.]

Exchange to block up holdings: RCW 76.12.050, 76.12.060.

79.08.190 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Lands acquired—How held and administered. Lands acquired by the state of Washington as the result of any exchange authorized by RCW 79.08.180 through 79.08.200, shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1957 c 290 § 2.]

79.08.200 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Agreements, deeds, etc. The commissioner of public lands shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to execute such exchange authorized by RCW 79.08.180 through 79.08.200. [1957 c 290 § 3.]

79.08.210 Transfer of state forest lands back to counties for park use—Procedure—Timber resource management. See RCW 76.12.072 through 76.12.075.

79.08.250 Exchange of lands—Purposes. The department of natural resources may exchange surplus real property previously acquired by the department as administrative sites. The property may be exchanged for any public or private real property of equal value, to preserve archeological sites on trust lands, to acquire land to be held in natural preserves, to maintain habitats for endangered species, or to acquire or enhance sites to be dedicated for recreational purposes. [1979 c 24 § 1.]

79.08.275 Management and control of portion of Milwaukee Road corridor. The portion of the Milwaukee Road corridor from the western end of the tunnel located in the southeast corner of section 20, township 19 north, range 17 east, W.M., approximately twenty-five miles east of the western terminus, to the Idaho border purchased by the state shall be under the management and control of the department of natural resources. [1984 c 174 § 6.]

Purpose—1984 c 174: See note following RCW 43.51.405.

79.08.277 Milwaukee Road corridor—Recreational use—Permit—Rules—Fees. The portion of the Milwaukee Road corridor under management and control of the department of natural resources shall be open to individuals or organized groups which obtain permits from the department of natural resources to travel the corridor for recreational purposes. The department of natural resources shall, for the purpose of issuing permits for corridor use, promulgate rules necessary for the orderly and safe use of the corridor and protection of adjoining landowners. Permit fees shall be

established at a level that will cover costs of issuance. Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property. [1984 c 174 § 7.]

Purpose—1984 c 174: See note following RCW 43.51.405.

79.08.279 Powers with respect to Milwaukee Road corridor. The department of natural resources may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety in consultation with local legislative authorities or fire districts;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if (a) such a sale or exchange will not adversely affect the recreational, transportation or utility potential of the corridor and (b) the department has not entered into a lease of the property in accordance with RCW 79.08.281. [1984 c 174 § 8.]

Purpose—1984 c 174: See note following RCW 43.51.405.

79.08.281 Leasing of portions of Milwaukee Road corridor—Duties with respect to unleased portions. (1) The department of natural resources shall offer to lease, and shall subsequently lease if a reasonable offer is made, portions of the Milwaukee Road corridor under its control to the person who owns or controls the adjoining land for periods of up to ten years commencing with June 7, 1984. The lessee shall assume the responsibility for fire protection, weed control, and maintenance of water conveyance facilities and culverts. The leases shall follow standard department of natural resources leasing procedures, with the following exceptions:

(a) The lessee may restrict public access pursuant to RCW 79.08.277 and 79.08.281(3).

(b) The right of renewal shall be to the current lessee if the lessee still owns or controls the adjoining lands.

(c) If two persons own or control opposite sides of the corridor, each person shall be eligible for equal portions of the available property.

(2) The department of natural resources has the authority to renew leases in existence on June 7, 1984.

(3) The leases shall contain a provision allowing the department of natural resources to issue permits to travel the corridor for recreational purposes.

(4) Unleased portions of the Milwaukee Road property under this section shall be managed by the department of natural resources. On these unleased portions, the department solely shall be responsible for weed control, culvert, bridge, and other necessary maintenance and fire protection services. The department shall place hazard warning signs and close hazardous structures on

unleased portions and shall regulate activities and restrict uses, including closing the corridor during seasons of high fire danger. [1984 c 174 § 9.]

Purpose—1984 c 174: See note following RCW 43.51.405.

79.08.283 Authority to terminate or modify leases—**Notice.** The state, through the department of natural resources, shall reserve the right to terminate a lease entered into pursuant to RCW 79.08.281 or modify authorized uses of the corridor for future recreation, transportation, or utility uses. If the state elects to terminate the lease, the state shall provide the lessee with a minimum of six months' notice. [1984 c 174 § 10.]

Purpose—1984 c 174: See note following RCW 43.51.405.

Chapter 79.12

SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

LEASING ON SHARE CROP BASIS

- 79.12.570 Share crop leases authorized—Terms—Application.
 79.12.600 Harvest, storage of crop—Notice—Warehouse receipts.
 79.12.610 Sale, storage, or other disposition of crops.
 79.12.620 Insurance of crop—Division of cost.
 79.12.630 Application of other provisions to share crop leases.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

LEASING ON SHARE CROP BASIS

79.12.570 Share crop leases authorized—**Terms**—**Application.** The commissioner of public lands may lease state lands on a share crop basis. Share crop leases shall be on such terms and conditions and for such length of time, not to exceed ten years, as the commissioner may prescribe. Upon receipt of a written application to lease state lands, the commissioner shall make such investigations as he shall deem necessary and if he finds that such a lease would be advantageous to the state, he may proceed with the leasing of such lands on said basis as other state lands are leased. [1979 ex.s. c 109 § 20; 1961 c 73 § 10; 1949 c 203 § 1; Rem. Supp. 1949 § 7895-1.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—**Effective date**—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.12.600 Harvest, storage of crop—**Notice**—**Warehouse receipts.** When wheat, barley, rye, corn, other grain or peas are harvested, the lessee shall give written notice to the commissioner that the crop is being harvested, and shall also give to the commissioner the name and address of the warehouse or elevator to which such grain or peas are sold or in which such grain or peas will be stored. The lessee shall also serve on the

owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out two warehouse receipts, one receipt showing the percentage of grain or peas belonging to the state and the other showing the percentage of grain or peas belonging to the lessee, and the respective amounts thereof, and shall deliver to the commissioner the receipt for the state's percentage of such grain or peas within ten days after he has received such instructions. [1949 c 203 § 4; Rem. Supp. 1949 § 7895-4.]

79.12.610 Sale, storage, or other disposition of crops. The commissioner shall sell the crops covered by the warehouse receipt and may comply with the provisions of any federal act or the regulation of any federal agency with relation to the storage or disposition of said grain or peas. [1977 c 20 § 1; 1949 c 203 § 5; Rem. Supp. 1949 § 7895-5.]

79.12.620 Insurance of crop—**Division of cost.** The lessee under any lease issued under the provisions of RCW 79.12.570 through 79.12.630 shall notify the commissioner of public lands as soon as an estimated yield of the crop can be obtained, such estimate to be immediately submitted to the commissioner, who is hereby authorized to insure the crop from loss by fire or hail. The cost of such insurance shall be paid by the state and lessee on the same basis as the crop returns to which each is entitled. [1949 c 203 § 6; Rem. Supp. 1949 § 7895-6.]

79.12.630 Application of other provisions to share crop leases. RCW 79.12.570 through 79.12.630 shall not repeal the provisions of the general leasing statutes of the state of Washington and all of the general provisions of such statutes with reference to filing of applications, deposits required therewith, forfeiture of deposits, cancellation of leases for noncompliance and general procedures shall apply to all leases issued under the provisions of RCW 79.12.570 through 79.12.630. [1949 c 203 § 7; Rem. Supp. 1949 § 7895-7.]

Chapter 79.14

OIL AND GAS LEASES ON STATE LANDS

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Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

Franchises on county roads and bridges: Chapter 36.55 RCW.

Gas and oil pipe lines: Chapter 81.88 RCW.

Interstate oil compact commission, governor may join: RCW 43.06.015.

Oil and gas conservation: Chapter 78.52 RCW.

79.14.010 Definitions. Whenever used in this chapter, unless the context otherwise requires, words and terms shall have the meaning attributed to them herein:

(1) "Public lands": Lands and areas belonging to or held in trust by the state, including tide and submerged lands of the Pacific Ocean or any arm thereof and lands of every kind and nature including mineral rights reserved to the state.

(2) "Commissioner": The commissioner of public lands of the state of Washington. [1967 c 163 § 6; 1955 c 131 § 1. Prior: 1937 c 161 § 1. Formerly RCW 78.28.280.]

1967 c 163 adopted to implement Amendment 42—Severability—1967 c 163: See notes following RCW 64.16.005.

79.14.020 Leases authorized—Terms—Duration. The commissioner is authorized to lease public lands for the purpose of prospecting for, developing and producing oil, gas or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres or an entire government surveyed section, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules and regulations adopted by the commissioner in accordance with the provisions of this chapter. Leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall comply with one of the following conditions: (1) Prosecute development on the leased land with the due diligence of a prudent operator upon encountering oil, gas, or other hydrocarbon substances, (2) produce any of said substances from the leased lands, (3) engage in drilling, deepening, repairing, or re-drilling any well thereon, or (4) participate in a unit plan to which the commissioner has consented under RCW 78.52.450. [1986 c 34 § 1; 1985 c 459 § 2; 1955 c 131 § 2. Prior: 1937 c 161 §§ 2, 3; 1927 c 255 §§ 175, 176. Formerly RCW 78.28.290.]

Severability—1985 c 459: See note following RCW 79.01.668.

79.14.030 Rental fees—Minimum royalties. The department of natural resources shall require as a prerequisite to the issuing of any lease a rental as set by the board of natural resources but not less than one dollar and twenty-five cents per acre or such prorated share of the rental per acre as the state's mineral rights ownership for the first year of such lease, payable in advance to the department of natural resources at the time the lease is awarded and a like rental annually in advance thereafter so long as such lease remains in force: *Provided*, That such rental shall cease at such time as royalty accrues to the state from production from such lease. Commencing with the lease year beginning on or after oil, gas or other hydrocarbon substances are first produced in quantities deemed paying quantities by lessee on the land subject to such lease, lessee shall pay a minimum royalty as set by the board of natural resources but not less than five dollars per acre or fraction thereof or such prorated share of the rental per acre as the state's mineral rights ownership at the expiration of each year. Royalties payable by the lessee shall be the royalties from production as provided for in RCW 79.14.070 or the minimum royalty provided herein, whichever is greater: *Provided*, That if such lease is unutilized, the minimum royalty shall be payable only on the leased acreage after production is obtained in such paying quantities from such lease. [1985 c 459 § 3; 1980 c 151 § 1; 1955 c 131 § 3. Prior: 1937 c 161 § 4; 1927 c 255 § 176. Formerly RCW 78.28.300.]

Severability—1985 c 459: See note following RCW 79.01.668.

79.14.040 Compensation to owners of private rights and to state for surface damage. No lessee shall commence any operation upon lands covered by his lease until such lessee has provided for compensation to owners of private rights therein according to law, or in lieu thereof, filed a surety bond with the commissioner in an amount sufficient in the opinion of the commissioner to cover such compensation until the amount of compensation is determined by agreement, arbitration or judicial decision and has provided for compensation to the state of Washington for damage to the surface rights of the state in accordance with the rules and regulations adopted by the commissioner. [1955 c 131 § 4. Prior: 1937 c 161 § 6; 1927 c 255 § 175. Formerly RCW 78.28.310.]

79.14.050 Drilling operations beyond lease term—Lease provisions. All leases shall provide that if oil, gas or other hydrocarbon substances are not encountered on or before the end of the initial term, the lease shall not terminate if the lessee is then prosecuting drilling operations on the leased lands with due diligence, in which event the same shall remain in force so long as lessee shall keep one string of tools in operation on the leased lands, allowing not to exceed ninety days between the completion of one well and the commencement of the next until such substances are encountered in quantities deemed paying quantities by lessee. All leases shall further provide that if oil, gas or other hydrocarbon substances in paying quantities shall have been discovered

on the leased lands prior to the expiration of the initial term, then in the event at any time after the expiration of the initial term production on the leased land shall cease from any cause, the lease shall not terminate provided lessee resumes operations for the drilling of a well or the restoration of production within ninety days from such cessation. The lease shall remain in force during the prosecution of such operations, and if production results therefrom, then so long as production continues. [1985 c 459 § 4; 1955 c 131 § 5. Prior: 1937 c 161 § 7; 1927 c 255 § 180. Formerly RCW 78.28.320.]

Severability—1985 c 459: See note following RCW 79.01.668.

79.14.060 Surrender of lease—Liability. Every lessee shall have the option of surrendering his lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued and except for physical damage to the premises embraced by his lease which have been occasioned by his operations. [1955 c 131 § 6. Prior: 1937 c 161 §§ 8, 10. Formerly RCW 78.28.330.]

79.14.070 Royalties. All oil and gas leases issued pursuant to this chapter shall be upon a royalty of not less than twelve and one-half percent of the gross production of all oil, gas or other hydrocarbons produced and saved from the lands covered by such lease. [1955 c 131 § 7. Prior: 1937 c 161 § 9; 1927 c 255 § 176. Formerly RCW 78.28.340.]

79.14.080 Leases of land within a geologic structure. Oil and gas leases shall not be issued on unleased lands which have been classified by the commissioner as being within a known geologic structure of a producing oil or gas field, except as follows: Upon application of any person, the commissioner shall lease in areas not exceeding six hundred forty acres, at public auction, any or all unleased lands within such geologic structure to the person offering the greatest cash bonus therefor at such auction. Notice of the offer of such lands for lease will be given by publication in a newspaper of general circulation in Olympia, Washington, and in such other publications as the commissioner may authorize. The first publication shall be at least thirty days prior to the date of sale. [1955 c 131 § 8. Prior: 1937 c 161 §§ 5, 11. Formerly RCW 78.28.350.]

79.14.090 Cancellation or forfeiture of leases—New leases. The commissioner is hereby authorized to cancel any lease issued as provided herein for nonpayment of rentals or royalties or nonperformance by the lessee of any provision or requirement of the lease: *Provided*, That before any such cancellation shall be made, the commissioner shall mail to the lessee by registered mail, addressed to the post office address of such lessee shown by the records of the office of the commissioner, a notice of intention to cancel such lease specifying the default for which the lease is subject to cancellation. If lessee shall, within thirty days after the mailing of said

notice to the lessee, commence and thereafter diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall be entered by the commissioner. Otherwise, the said cancellation shall be made and all rights of the lessee under the lease shall automatically terminate, except that lessee shall retain the right to continue its possession and operation of any well or wells in regard to which lessee is not in default: *Provided further*, That failure to pay rental and royalty required under leases within the time prescribed therein shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. Upon the expiration, forfeiture, or surrender of any lease, no new lease covering the lands or any of them embraced by such expired, forfeited, or surrendered lease, shall be issued for a period of ten days following the date of such expiration, forfeiture, or surrender. If more than one application for a lease covering such lands or any of them shall be made during such ten-day period the commissioner shall issue a lease to such lands or any of them to the person offering the greatest cash bonus for such lease at a public auction to be held at the time and place and in the manner as the commissioner shall by regulation prescribe. [1955 c 131 § 9. Prior: 1937 c 161 § 12; 1927 c 255 § 179. Formerly RCW 78.28.360.]

79.14.100 Cooperative or unit plans—Communitization or drilling agreements. For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, lessees thereon and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative [or] unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by commissioner to be necessary or advisable in the public interest. The commissioner is thereunto authorized, in his discretion, with the consent of the holders of leases involved, in order to conform with the terms and conditions of any such cooperative or unit plan to establish, alter, change or revoke exploration, drilling, producing, rental, and royalty requirements of such leases with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest.

When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease or any portion thereof may be pooled with other lands, whether or not owned by the state of Washington under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

The term of any lease that has become the subject of any cooperative or unit plan of development or operation

of a pool, field, or like area, which plan has the approval of the commissioner, shall continue in force until the termination of such plan, and in the event such plan is terminated prior to the expiration of any such lease, the original term of such lease shall continue. Any lease under this chapter hereinafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan, shall be segregated in separate leases as to the lands committed and the land not committed as of the effective date of unitization. [1955 c 131 § 10. Prior: 1937 c 161 § 14. Formerly RCW 78.28.370.]

79.14.110 Customary provisions in leases. The commissioner is authorized to insert in any lease issued under the provisions of this chapter such terms as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands not in conflict with the provisions of this chapter. [1955 c 131 § 11. Prior: 1937 c 161 § 15; 1927 c 255 § 178. Formerly RCW 78.28.380.]

79.14.120 Rules and regulations. The commissioner is required to prescribe and publish, for the information of the public, all reasonable rules and regulations necessary for carrying out the provisions of this chapter. He may amend or rescind any rule or regulation promulgated by him under the authority contained herein: *Provided*, That no rule or regulation or amendment of the same or any order rescinding any rule or regulation shall become effective until after thirty days from the promulgation of the same by publication in a newspaper of general circulation published at the state capitol and shall take effect and be in force at times specified therein. All rules and regulations of the commissioner and all amendments or revocations of existing rules and regulations shall be recorded in an appropriate book or books, shall be adequately indexed, and shall be kept in the office of the commissioner and shall constitute a public record. Such rules and regulations of the commissioner shall be printed in pamphlet form and furnished to the public free of cost. [1955 c 131 § 12. Prior: 1937 c 161 § 16; 1927 c 255 § 178. Formerly RCW 78.28.390.]

79.14.130 Wells to be located minimum distance from boundaries—Exception. Each lease issued under this chapter shall provide that without the approval of the commissioner, no well shall be drilled on the lands demised thereby in such manner or at such location that the producing interval thereof shall be less than three hundred thirty feet from any of the outer boundaries of the demised lands, except that if the right to oil, gas or other hydrocarbons underlying adjoining lands be vested in private ownership, such approval shall not be required. [1955 c 131 § 13. Prior: 1937 c 161 § 17. Formerly RCW 78.28.400.]

79.14.140 Rights of way over public lands—Payment for timber. Any person granted a lease under the provisions of this chapter shall have a right of way over

public lands, as provided by law, when necessary, for the drilling, recovering, saving and marketing of oil, gas or other hydrocarbons. Before any such right of way grant shall become effective, a written application for, and a plat showing the location of, such right of way, and the land necessary for the well site and drilling operations, with reference to adjoining lands, shall be filed with the commissioner. All timber on said right of way and the land necessary for the drilling operation, shall be appraised by the commissioner and paid for in money by the person to whom the lease is granted. [1955 c 131 § 14. Prior: 1937 c 161 § 18. Formerly RCW 78.28.410.]

79.14.150 Sales of timber—Rules. All sales of timber, as prescribed in this chapter, shall be made subject to the right, power and authority of the commissioner to prescribe rules and regulations governing the manner of the removal of the merchantable timber upon any lands embraced within any lease with the view of protecting the same and other timber against destruction or injury by fire or from other causes. Such rules or regulations shall be binding upon the lessee, his successors in interest, and shall be enforced by the commissioner. [1955 c 131 § 15. Prior: 1937 c 161 § 19. Formerly RCW 78.28.420.]

79.14.160 Development after discovery. After the discovery of oil, gas or other hydrocarbons in paying quantities, lessee shall proceed to develop the oil, gas or other hydrocarbons in the lands covered thereby through the drilling of such wells as will efficiently extract the oil, gas or other hydrocarbons therefrom and such development shall take into account the productiveness of the producing horizon, the depth at which it occurs, the average cost of wells, the market requirements obtaining at any given time, and the maintenance of proper oil and gas ratios. [1955 c 131 § 16. Prior: 1937 c 161 § 20. Formerly RCW 78.28.430.]

79.14.170 Spacing and offsetting of wells. All leases shall contain such terms, conditions, and provisions as will protect the interests of the state with reference to spacing of wells for the purpose of offsetting any wells on privately owned lands. [1955 c 131 § 17. Prior: 1937 c 161 § 21. Formerly RCW 78.28.440.]

79.14.180 Lands may be withheld from leasing. Nothing contained in this chapter shall be construed as requiring the commissioner to offer any tract or tracts of land for lease; but the commissioner shall have power to withhold any tract or tracts from leasing for oil, gas or other hydrocarbons, if, in his judgment, the best interest of the state will be served by so doing. [1955 c 131 § 18. Prior: 1937 c 161 § 24. Formerly RCW 78.28.450.]

79.14.190 Payment of royalty share—Royalty in kind. The lessee shall pay to the commissioner the market value at the well of the state's royalty share of oil and other hydrocarbons except gas produced and saved and delivered by lessee from the lease. In lieu of receiving payment for the market value of the state's royalty

share of oil, the commissioner may elect that such royalty share of oil be delivered in kind at the mouth of the wells into tanks provided by the commissioner. Lessee shall pay to the commissioner the state's royalty share of the sale price received by the lessee for gas produced and saved and sold from the lease. If such gas is not sold but is used by lessee for the manufacture of gasoline or other products, lessee shall pay to the commissioner the market value of the state's royalty share of the residue gas and other products, less a proper allowance for extraction costs. [1955 c 131 § 19. Prior: 1937 c 161 § 25. Formerly RCW 78.28.460.]

79.14.200 Prior permits validated—Relinquishment for new leases. All exploration permits issued by the commissioner prior to the *effective date of this chapter, which have not expired or been legally canceled for nonperformance by the permittees, are hereby declared to be valid and existing contracts with the state of Washington, according to their terms and provisions. The obligation of the state to conform to the terms and provisions of such permits is hereby recognized, and the commissioner is directed to accept and recognize all such permits according to their express terms and provisions. No repeal or amendment made by this chapter shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at time of its acquisition. Any permit recognized and confirmed by this section may be relinquished to the state by the permittee, and a new lease or, if such permit contains more than six hundred forty acres, new leases in the form provided for in this chapter, shall be issued in lieu of same and without bonus therefor; but the new lease or leases so issued shall be as provided for in this chapter and governed by the applicable provisions of this chapter instead of by the law in effect prior thereto. [1955 c 131 § 20. Prior: 1937 c 161 § 26. Formerly RCW 78.28.470.]

*Reviser's note: The *effective date of this chapter* was midnight, June 8, 1955; see preface 1955 session laws.

79.14.210 Assignments and subleases of leases. Any oil or gas lease issued under the authority of this chapter may be assigned or subleased as to all or part of the acreage included therein, subject to final approval by the commissioner, and as to either a divided or undivided interest therein to any person. Any assignment or sublease shall take effect as of the first day of the lease month following the date of filing with the commissioner: *Provided, however,* That the commissioner may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and upon approval of such assignment by the commissioner, the assignor shall be released and discharged from all

obligations thereafter accruing with respect to the assigned lands. [1955 c 131 § 21. Prior: 1937 c 161 § 27. Formerly RCW 78.28.480.]

79.14.220 Appeal from rulings of commissioner. Any applicant for a lease under this chapter, feeling himself aggrieved by any order or decision, rule or regulation of the commissioner of public lands, concerning the same, may appeal therefrom to the superior court of the county wherein such lands are situated, as provided by RCW 79.01.500. [1955 c 131 § 22. Prior: 1937 c 161 § 28. Formerly RCW 78.28.490.]

79.14.900 Severability—1955 c 131. If any provision or section of this chapter shall be adjudicated to be unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any part thereof not adjudicated unconstitutional. If any provision of this chapter, or the application of such provision to any person or circumstances is held unconstitutional, invalid or unenforceable, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held unconstitutional, invalid or unenforceable, shall not be affected thereby. [1955 c 131 § 23. Formerly RCW 78.28.900.]

Chapter 79.24

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GENERAL

79.24.010 Designation of lands—Sale, manner, consent of board. All lands granted to the state by the federal government for the purpose of erecting public buildings at the state capitol shall be known and designated as "Capitol Building Lands". None of such lands, nor the timber or other materials thereon, shall hereafter be sold without the consent of the board of natural resources and only in the manner as provided for public

lands and materials thereon. [1959 c 257 § 42; 1909 c 69 § 2; RRS § 7898.]

79.24.020 Use of funds restricted. All funds arising from the sale of lands granted to the state of Washington for the purpose of erecting public buildings at the state capital shall be held intact for the purpose for which they were granted. Lands when selected and assigned to said grant shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for the erection of buildings at the state capital. [1893 c 83 § 1; RRS § 7896.]

79.24.030 Employment of assistants—Payment of expenses. The board of natural resources and the state capitol committee may employ such cruisers, draughtsmen, engineers, architects or other assistants as may be necessary for the best interests of the state in carrying out the provisions of *this act, and all expenses incurred by the board and committee, and all claims against the capitol building construction account shall be audited by the state capitol committee and presented in vouchers to the state treasurer, who shall draw a warrant therefor against the capitol building construction account as herein provided or out of any appropriation made for such purpose. [1985 c 57 § 76; 1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

***Reviser's note:** "This act" first appears in 1909 c 69 codified as RCW 79.24.010 and 79.24.030 through 79.24.085.
Effective date—1985 c 57: See note following RCW 15.52.320.

79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids. The proceeds of such sale of capitol building lands, or the timber or other materials shall be paid into the capitol building construction account which is hereby established in the state treasury to be used as in *this act provided. All contracts for the construction of capitol buildings shall be let after notice for proposals or bids have been advertised for at least four consecutive weeks in at least three newspapers of general circulation throughout the state. [1985 c 57 § 77; 1959 c 257 § 44; 1911 c 59 § 10; 1909 c 69 § 5; RRS § 7901.]

***Reviser's note:** For "this act", see note following RCW 79.24.030.
Effective date—1985 c 57: See note following RCW 15.52.320.

79.24.085 Disposition of money from sales. All sums of money received from sales shall be paid into the capitol building construction account in the state treasury, and are hereby appropriated for the purposes of *this act. [1985 c 57 § 78; 1959 c 257 § 46; 1909 c 69 § 8; RRS § 7904.]

***Reviser's note:** For "this act", see note following RCW 79.24.030.
Effective date—1985 c 57: See note following RCW 15.52.320.

79.24.087 Capitol grant revenue to capitol building construction account. All revenues received from leases and sales of lands, timber and other products on the surface or beneath the surface of the lands granted to the state of Washington by the United States pursuant

to an act of Congress approved February 22, 1889, for capitol building purposes, shall be paid into the "capitol building construction account". [1923 c 12 § 1; RRS § 7921-1. Formerly RCW 43.34.060.]

DESCHUTES BASIN

79.24.100 Bond issue authorized. The state capitol committee may issue coupon or registered bonds of the state of Washington in an amount not exceeding one million dollars. The bonds shall bear interest at a rate not to exceed five percent per annum, both principal and interest to be payable only from the capitol building construction fund from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes. [1947 c 186 § 1; Rem. Supp. 1947 § 7921-10.]

Capitol building construction fund abolished and moneys transferred to capitol building construction account: RCW 43.79.330 through 43.79.334.

State capitol committee: Chapter 43.34 RCW.

79.24.110 Sale of bonds—Price—Investment of funds in. Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed five percent per annum as computed by standard tables upon such sums; or the state treasurer may invest surplus cash in the accident fund in such bonds at par, at such rate of interest, not exceeding five percent as may be agreed upon between the treasurer and the state capitol committee, and the state finance committee may invest any surplus cash in the general fund, not otherwise appropriated, in such bonds at par at such rate of interest, not exceeding five percent, as may be agreed upon between the state finance committee and the state capitol committee. [1947 c 186 § 2; Rem. Supp. 1947 § 7921-11.]

Accident fund: RCW 51.44.010.

State finance committee: Chapter 43.33 RCW.

State treasurer: Chapter 43.08 RCW.

79.24.120 Life of bonds—Payment of interest. Bonds issued under RCW 79.24.100 through 79.24.160 shall be payable in such manner, at such place or places, and at such time or times, not longer than twenty years from their date; with the option of paying any or all of said bonds at any interest paying date, as shall be fixed by the capitol committee, and the interest on the bonds shall be payable semiannually. [1947 c 186 § 3; Rem. Supp. 1947 § 7921-12.]

79.24.130 Signatures—Registration of bonds. The bonds shall be signed by the governor and state auditor under the seal of the state, and any coupons attached thereto shall be signed by the same officers, whose signatures thereupon may be printed facsimile. Any of such

bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York, as to principal alone, or as to both principal and interest, under such regulations as the state capitol committee may prescribe. [1947 c 186 § 4; Rem. Supp. 1947 § 7921-13.]

79.24.140 Proceeds to capitol building construction account. The proceeds from the sale of the bonds hereby authorized shall be paid into the *capitol building construction fund. [1947 c 186 § 5; Rem. Supp. 1947 § 7921-14.]

*Reviser's note: For "capitol building construction fund", see note following RCW 79.24.100.

79.24.150 Bonds as security and legal investment. Bonds authorized by RCW 79.24.100 through 79.24.160 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.100 through 79.24.160. [1947 c 186 § 6; Rem. Supp. 1947 § 7921-15.]

79.24.160 Use of proceeds specified. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee in the completion of the Deschutes Basin project adjacent to the state capitol grounds. The project shall embrace: (1) The acquisition by purchase or condemnation of necessary lands or easements; (2) the construction of a dam or weir along the line of Fifth Avenue in the city of Olympia and a parkway and railroad over the same; (3) the construction of a parkway on the west bank of the Deschutes River to a connection with the Olympic highway; (4) the construction of a parkway from the vicinity of Ninth Avenue and Columbia Street in the city of Olympia around the south side of the north Deschutes Basin, using the existing railroad causeway, to a road along Percival Creek and connecting with the Olympic highway; (5) the preservation of the precipitous banks surrounding the basin by the acquisition of easements or other rights whereby the cutting of trees and the building of structures on the banks can be controlled; (6) the construction by dredging of varying level areas at the foot of the bluffs for access to water and to provide for boating and other recreational areas, and (7) such other undertakings as, in the judgment of the committee, are necessary to the completion of the project.

In connection with the establishment of parkways, causeways, streets, and highways, or the relocation thereof, and the rerouting of railroads to effectuate the general plan of the basin project, the committee shall at all times cooperate with the department of transportation, the proper authorities of the city of Olympia, and

the railroad companies which may be involved in the re-routing of railway lines. [1984 c 7 § 370; 1947 c 186 § 7; Rem. Supp. 1947 § 7921-16.]

Severability—1984 c 7: See note following RCW 47.01.141.

PARKING FACILITIES

79.24.300 Parking facilities authorized—Rental. The state capitol committee may construct parking facilities for the state capitol adequate to provide parking space for automobiles, said parking facilities to be either of a single level, multiple level, or both, and to be either on one site or more than one site and located either on or in close proximity to the capitol grounds, though not necessarily contiguous thereto. The state capitol committee may select such lands as are necessary therefor and acquire them by purchase or condemnation. As an aid to such selection the committee may cause location, topographical, economic, traffic, and other surveys to be conducted, and for this purpose may utilize the services of existing state agencies, may employ personnel, or may contract for the services of any person, firm or corporation. In selecting the location and plans for the construction of the parking facilities the committee shall consider recommendations of the director of general administration.

Space in parking facilities may be rented to the officers and employees of the state on a monthly basis at a rental to be determined by the director of general administration. The state shall not sell gasoline, oil, or any other commodities or perform any services for any vehicles or equipment other than state equipment. [1977 c 75 § 90; 1965 c 129 § 1; 1955 c 293 § 1.]

79.24.310 Number and location of facilities. The state capitol committee may construct any two of the following three facilities: (1) A two story parking facility south of the transportation and public lands building in the existing parking area; (2) multiple level but not to exceed three story parking facility adjacent to the new office building; (3) multiple level but not to exceed three story parking facility adjacent to the new office building. [1955 c 293 § 2.]

79.24.320 Appropriations—Parking facilities, laboratories. There is appropriated to the state capitol committee from the *capitol building construction fund for the fiscal biennium ending June 30, 1957, the sum of seven hundred thousand dollars for the purposes of RCW 79.24.300, 79.24.310 and 79.24.320. Of this sum five hundred thousand dollars is to be used for parking purposes as outlined above and the remaining two hundred thousand dollars of this sum are to be used to complete the fisheries and health laboratories in the new office building on the contingency that it is necessary for the fisheries and health departments to move to Olympia. [1955 c 293 § 3.]

***Reviser's note:** For "capitol building construction fund", see note following RCW 79.24.100.

79.24.330 Purchase of land for parking facilities authorized. For use in the construction thereon of parking facilities in close proximity to the capitol grounds, the state capitol committee is authorized to purchase, at a price not in excess of one hundred thousand dollars, the following real estate situated in the city of Olympia, Thurston county, state of Washington, and more particularly described as: Lots two, three, six, and seven, block eight, P.D. Moore's addition to the town of Olympia, according to the plat thereof recorded in volume 1 of plats, page 32, records of said county. [1957 c 257 § 1.]

79.24.340 Purchase of land for parking facilities authorized—Construction of one-level facility. After purchase of the said real estate the state capitol committee shall construct thereon one-level parking facilities suitable for as large a number of automobiles as may reasonably be accommodated thereon. [1957 c 257 § 2.]

SYLVESTER PARK

79.24.400 Sylvester Park—Grant authorized. The city of Olympia may grant to the state of Washington its right, title and interest in that public square situated therein and bounded by Capitol Way, Legion Way, Washington Street and East Seventh Street, and commonly known as Sylvester Park, and such conveyance shall in all respects supersede the terms and effect of any prior conveyance or agreement concerning this property. [1955 c 216 § 1.]

79.24.410 Sylvester Park—Subsurface parking facility. The state capitol committee may accept such grant on behalf of the state. Upon receipt from the city of Olympia of the conveyance authorized by RCW 79.24.400, the state capitol committee may lease the premises thereby conveyed, to any person, firm, or corporation for the purpose of constructing, operating and maintaining a garage and parking facility underneath the surface of said property.

The lease shall be for a term of not to exceed twenty-five years and by its terms shall require the lessee to restore and maintain the condition of the surface of the property so as to be available and suitable for use as a public park. The lease shall further provide that all improvements to the property shall become the property of the state upon termination of the lease, and may provide such further terms as the capitol committee may deem to be advantageous. [1955 c 216 § 2.]

ACCESS TO CAPITOL GROUNDS

79.24.450 Access to capitol grounds on described route authorized. The state capitol committee may construct a suitable access to the capitol grounds by way of fourteenth and fifteenth streets in the city of Olympia, and for the purpose may acquire, by purchase or condemnation, such lands along the said streets and between Capitol Way and Cherry Street in the city of Olympia, and construct thereon such improvements as the state

capitol committee may deem proper for the purposes of such access. [1957 c 258 § 1.]

EAST CAPITOL SITE

79.24.500 Property described. The state capitol committee shall proceed as rapidly as their resources permit to acquire title to the following described property for development as state capitol grounds:

That area bounded as follows: Commencing at a point beginning at the southwest corner of Capitol Way and 15th Avenue and proceeding westerly to the present easterly boundary of the capitol grounds on the west; thence proceeding northerly along said easterly boundary of the capitol grounds; thence proceeding easterly along the boundary of the present capitol grounds to a point at the corner of Capitol Way and 14th Avenue; thence proceeding southerly to the point of beginning; also that area bounded by Capitol Way on the west, 11th Avenue on the north, Jefferson Street on the east, and 16th Avenue (Maple Park) on the south; also that area bounded by Jefferson Street on the west, 14th Avenue on the north, Cherry Street on the east and 14th Avenue (Interstate No. 5 access) on the south; also that area bounded by 14th Avenue (Interstate No. 5 access) on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, 16th Avenue on the south, and Jefferson Street on the west; also that area bounded by 15th Avenue on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, and 14th Avenue (Interstate No. 5 access) on the south and west; all in the city of Olympia, county of Thurston, state of Washington, or any such portion or portions of the above described areas as may be required for present or future expansion of the facilities of the state capitol. [1967 ex.s. c 43 § 1; 1961 c 167 § 1.]

79.24.510 Area designated as the east capitol site. The area described in RCW 79.24.500 shall be known as the east capitol site, and upon acquisition shall become part of the state capitol grounds. [1961 c 167 § 2.]

79.24.520 Acquisition of property authorized—Means—Other state agencies to assist committee in executing chapter. The state capitol committee may acquire such property by gift, exchange, purchase, option to purchase, condemnation, or any other means of acquisition not expressly prohibited by law. All other state agencies shall aid and assist the state capitol committee in carrying out the provisions of RCW 79.24.500 through 79.24.600. [1961 c 167 § 3.]

79.24.530 Department of general administration to design and develop site and buildings—Approval of capitol committee. The department of general administration shall develop, amend and modify an overall plan for the design and establishment of state capitol buildings and grounds on the east capitol site in accordance with current and prospective requisites of a state capitol befitting the state of Washington. The overall plan,

amendments and modifications thereto shall be subject to the approval of the state capitol committee. [1961 c 167 § 4.]

79.24.540 State agencies may buy land and construct buildings thereon—Requirements. State agencies which are authorized by law to acquire land and construct buildings, whether from appropriated funds or from funds not subject to appropriation by the legislature, may buy land in the east capitol site and construct buildings thereon so long as the location, design and construction meet the requirements established by the department of general administration and approved by the state capitol committee. [1961 c 167 § 5.]

79.24.550 State buildings to be constructed only on capitol grounds—Exception. No state agency shall undertake construction of buildings in Thurston county except upon the state capitol grounds: *Provided*, That the state capitol committee may authorize exceptions upon a finding by the state capitol committee that appropriate locations on the capitol grounds or east capitol site are unavailable. [1961 c 167 § 6.]

79.24.560 Department of general administration to rent, lease or use properties. The department of general administration shall have the power to rent, lease, or otherwise use any of the properties acquired in the east capitol site. [1961 c 167 § 7.]

79.24.570 Use of proceeds from site. All moneys received by the department of general administration from the management of the east capitol site, excepting (1) funds otherwise dedicated prior to April 28, 1967, (2) parking and rental charges and fines which are required to be deposited in other accounts, and (3) reimbursements of service and other utility charges made to the department of general administration, shall be deposited in the capitol purchase and development account of the state general fund or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638. [1969 ex.s. c 273 § 11; 1963 c 157 § 1; 1961 c 167 § 8.]

Severability—1969 ex.s. c 273: See RCW 79.24.647.

79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account—Capitol purchase and development account—Earnings. (Effective until July 1, 1989.) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be distributed as follows: (1) Forty percent shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands

for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects; and (2) the remainder shall be deposited in the capitol purchase and development account in the state treasury which is hereby authorized or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638. All earnings of investments of balances in the aquatic lands enhancement account and the capitol purchase and development account shall be credited to the general fund. [1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—**Effective date**—1984 c 221: See RCW 79.90.901 and 79.90.902.

Severability—1969 ex.s. c 273: See RCW 79.24.647.

79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account. (Effective July 1, 1989.) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be distributed as follows: (1) To the state building bond redemption fund such amounts necessary to retire bonds issued pursuant to RCW 79.24.630 through 79.24.647 prior to January 1, 1987, and for which tide and harbor area revenues have been pledged, and (2) all moneys not deposited for the purposes of subsection (1) of this section shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects. [1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9.]

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—**Effective date**—1984 c 221: See RCW 79.90.901 and 79.90.902.

Severability—1969 ex.s. c 273: See RCW 79.24.647.

79.24.590 Use of private real estate and rights in site declared public use. The use of the private real estate, rights, and interests in the east capitol site is hereby declared to be a public use. [1961 c 167 § 10.]

79.24.600 Severability—1961 c 167. If any provision of RCW 79.24.500 through 79.24.590, or its application to any person or circumstance is held invalid, the remainder of RCW 79.24.500 through 79.24.590, or the application of the provision to other persons or circumstances is not affected. [1961 c 167 § 11.]

EAST CAPITOL SITE—1967 BOND ISSUE

79.24.630 Revenue bonds authorized—Amount—Interest and maturity—Payable from certain funds. In addition to any authority previously granted, the state capitol committee is authorized and directed to issue coupon or registered revenue bonds of the state in an amount not to exceed four million dollars. The bonds shall bear interest at such rates and mature at such times as the state capitol committee shall determine by resolution. Both principal and interest shall be payable only from funds received and deposited in the capitol purchase and development account of the general fund or directly from proceeds provided in RCW 79.24.570. [1970 ex.s. c 14 § 1. Prior: 1969 ex.s. c 273 § 3; 1967 ex.s. c 105 § 4.]

79.24.632 Sale of bonds. Such bonds may be sold in such manner and in such amounts, in such denominations, at such price and at such times as the capitol committee shall determine. [1969 ex.s. c 273 § 4; 1967 ex.s. c 105 § 5.]

79.24.634 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable. Bonds issued under RCW 79.24.630 through 79.24.646 shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. In issuing such bonds and including such provisions, the state capitol committee shall act for the state and all officers, departments and agencies thereof affected by such provisions, and the state and such officers, departments and agencies shall adhere to and be bound by such covenants. As long as any of such bonds shall be outstanding, neither the state, nor any of its officers, departments, agencies or instrumentalities, shall divert any of the proceeds and revenues actually pledged to secure the payment of the bonds and interest thereon, and the provisions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as the bonds are outstanding and unpaid and shall constitute a contract to that effect for the benefit of the holders of all such bonds. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. [1969 ex.s. c 273 § 5; 1967 ex.s. c 105 § 6.]

79.24.636 Signatures—Registration. The bonds shall be signed by the governor and state treasurer under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed with the facsimile signature of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both

principal and interest, under such regulations as the treasurer may prescribe. [1969 ex.s. c 273 § 6; 1967 ex.s. c 105 § 7.]

79.24.638 Payment of principal and interest—State building bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale. For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building bond redemption fund". While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the twelve-month period of the next fiscal year, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during said twelve-month period and at least fifteen days prior to each interest and principal payment date deposit into the state building bond redemption fund that portion of all receipts necessary to pay the principal and interest on the bonds issued that would otherwise be deposited in the general fund—capitol purchase and development account and transfer such additional amounts from the general fund—capitol purchase and development account as may be necessary until the amount certified to said treasurer by the said capitol committee has accrued to the state building bond redemption fund. Nothing in RCW 79.24.630 through 79.24.642, 79.24.645, 79.24.647, 79.24.570 and 79.24.580 shall prohibit the use of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

On June 30, 1983, the state treasurer shall transfer from the capitol purchase and development account to the general fund all moneys in excess of seven hundred thousand dollars.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of said bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of said bonds, provide for additional payments into the state building bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—capitol purchase and development account. [1982 2nd ex.s. c 8 § 5; 1969 ex.s. c 273 § 7; 1967 ex.s. c 105 § 8.]

79.24.640 Bonds as security and legal investment. Bonds authorized by RCW 79.24.630 through 79.24.646, shall be accepted by the state, counties, cities,

towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.630 through 79.24.646. [1969 ex.s. c 273 § 8; 1967 ex.s. c 105 § 9.]

79.24.642 Use of bond proceeds. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in this section.

The state capitol committee shall provide for the acquisition, development and improvement of lands, improvements and facilities within the east capitol site, as now described or as may be described by the legislature, as may be determined by the state capitol committee to be necessary for the current and prospective requisites of a state capitol in accordance with the provisions of RCW 79.24.500 through 79.24.590 and chapter 43.19 RCW, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the improvements and facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 273 § 9; 1967 ex.s. c 105 § 10.]

79.24.6421 Refunding revenue bonds authorized—Amount—Interest rate—Issue. The state capitol committee is hereby authorized to refund, at the maturity thereof, or before the maturity thereof if they are subject to call prior to maturity, or if all the holders thereof consent thereto, upon such terms and conditions as it shall deem just, any or all of its revenue bonds now or hereafter outstanding, issued pursuant to RCW 79.24.630 through 79.24.646, which revenue bonds are payable out of the state building bond redemption fund. Refunding revenue bonds may be issued hereunder in a sufficient amount to refund the aforesaid outstanding revenue bonds and in addition to provide the balance of the four million dollars in bond proceeds authorized by RCW 79.24.630 for deposit into the general fund—capitol purchase and development account. Such refunding bonds shall bear interest at such rates and mature at such times, without limitation by the interest rates or maturity of the bonds being refunded, as the state capitol committee shall determine by resolution. Such refunding revenue bonds shall be issued in accordance with and be subject to the provisions of RCW 79.24.630 through 79.24.642. [1969 ex.s. c 273 § 1.]

79.24.6422 Refunding revenue bonds authorized—Refunding revenue bonds payable from state building bond redemption fund—Not state obligation. Such refunding revenue bonds shall be payable solely from the state building bond redemption fund created by RCW 79.24.638 from the moneys provided by law to be deposited therein. Such bonds shall not be general obligations of the state of Washington. [1969 ex.s. c 273 § 2.]

79.24.644 Appropriation. There is appropriated to the department of general administration from the general fund—capitol purchase and development account the sum of four million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.642. [1967 ex.s. c 105 § 11.]

79.24.645 Reappropriation—1969 ex.s. c 273. There is reappropriated to the department of general administration from the general fund—capitol purchase and development account the sum of four million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.642. [1969 ex.s. c 273 § 10.]

79.24.646 Severability—1967 ex.s. c 105. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 105 § 12.]

79.24.647 Severability—1969 ex.s. c 273. If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1969 ex.s. c 273 § 13.]

STATE BUILDINGS AND PARKING FACILITIES—1969 ACT

79.24.650 Committee duties enumerated. The state capitol committee shall provide for the construction, remodeling, and furnishing of capitol office buildings, parking facilities, governor's mansion, and such other buildings and facilities as are determined by the state capitol committee to be necessary to provide space for the legislature by way of offices, committee rooms, hearing rooms, and work rooms, and to provide executive office space and housing for the governor, and to provide executive office space for other elective officials and such other state agencies as may be necessary, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 272 § 1.]

79.24.652 Bonds authorized—Amount—Interest and maturity—Payable from certain revenues. In addition to any authority previously granted, the state capitol committee is authorized and directed to issue coupon or registered revenue bonds of the state in an amount not to exceed fifteen million dollars. The bonds may be sold in such manner and amounts, and in such denominations, at such times, at such price and shall bear interest at such rates and mature at such times as the state capitol committee shall determine by resolution. Both principal and interest shall be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the

lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes and from any parking revenues derived from state capitol parking facilities. [1969 ex.s. c 272 § 2.]

79.24.654 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable. Bonds issued under RCW 79.24.650 through 79.24.668 shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. In issuing such bonds and including such provisions, the state capitol committee shall act for the state and all officers, departments and agencies thereof affected by such provisions, and the state and such other officers, departments and agencies shall adhere to and be bound by such covenants. As long as any of such bonds shall be outstanding, neither the state, nor any of its officers, departments, agencies or instrumentalities, shall divert any of the proceeds and revenues actually pledged to secure the payment of the bonds and interest thereon, and the provisions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as the bonds are outstanding and unpaid and shall constitute a contract to that effect for the benefit of the holders of all such bonds. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. [1969 ex.s. c 272 § 3.]

79.24.656 Signatures—Registration. The bonds shall be signed by the governor and state treasurer under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed with the facsimile signature of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe. [1969 ex.s. c 272 § 4.]

79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale. For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building and parking bond redemption fund". While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the next fiscal year, and certify said amount to the state treasurer in

writing. The state treasurer shall forthwith and thereafter during that fiscal year and at least fifteen days prior to each interest and principal payment date deposit into the state building and parking bond redemption fund all receipts from any parking facilities and to the extent necessary from receipts from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress until the amount certified to the treasurer by the capitol committee has accrued to the state building and parking bond redemption fund. Nothing in RCW 79.24.650 through 79.24.668 shall prohibit the use of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of said bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of said bonds, provide for additional payments into the state building and parking bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—state building construction account. [1969 ex.s. c 272 § 5.]

79.24.660 Bonds as security and legal investment. Bonds authorized by RCW 79.24.650 through 79.24.668 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.650 through 79.24.668. [1969 ex.s. c 272 § 6.]

79.24.662 Use of bond proceeds. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in RCW 79.24.650. [1969 ex.s. c 272 § 7.]

79.24.664 Appropriation. There is appropriated to the department of general administration from the general fund—state building construction account the sum of fifteen million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.650. [1969 ex.s. c 272 § 8.]

79.24.666 State capitol committee to act upon advice of legislative committee—State capitol committee powers. The state capitol committee shall perform the foregoing in accordance with law and after consultation with and advice of such committee of the senate and house of representatives as the legislature may appoint for this purpose. The state capitol committee shall have power to do all acts and things necessary or convenient to carry out the purposes of RCW 79.24.650 through 79.24.668 subject to and in accordance with the provisions of RCW 79.24.650 through 79.24.668 and chapters 43.19 and 79.24 RCW. [1969 ex.s. c 272 § 9.]

79.24.668 Severability—1969 ex.s. c 272. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1969 ex.s. c 272 § 11.]

Chapter 79.28

LIEU LANDS

Sections

79.28.010	Agreements for selection authorized.
79.28.020	Examination and appraisal.
79.28.030	Transfer of title to lands relinquished.
79.28.040	Livestock grazing on lieu lands.
79.28.050	Grazing permits—Arrangements with United States government.
79.28.070	Improvement of grazing ranges—Agreements.
79.28.080	Improvement of grazing ranges—Extension of duration of permit—Reduction of fees.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

Granted lands: Enabling Act §§ 10–12 and 15–19; state Constitution Art. 16.

79.28.010 Agreements for selection authorized. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of state land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of RCW 79.28.010 through 79.28.030, of lands of the United States of equal area and value. [1913 c 102 § 1; RRS § 7824.]

79.28.020 Examination and appraisal. Upon the making of any such agreement, the board of state land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in RCW 79.28.010, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [1913 c 102 § 2; RRS § 7825.]

79.28.030 Transfer of title to lands relinquished. Whenever the title to any lands selected under the provisions of RCW 79.28.010 through 79.28.030 shall become vested in the state of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of RCW 79.28.010 through 79.28.030, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [1913 c 102 § 3; RRS § 7826.]

79.28.040 Livestock grazing on lieu lands. The commissioner of public lands shall have the power, and it shall be his duty, to adopt and promulgate, from time to time, reasonable rules and regulations for the grazing of livestock on such tracts and areas of the indemnity or lieu public lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.28.010. [1923 c 85 § 1; RRS § 7826-1.]

79.28.050 Grazing permits—Arrangements with United States government. The commissioner of public lands shall have the power to issue permits for the grazing of livestock on the lands described in RCW 79.28.040 in such manner and upon such terms, as near as may be, as permits are, or shall be, issued by the United States for the grazing of livestock on national forest reserve lands and for such fees as he shall deem adequate and advisable, and shall have the power to enter into such arrangements as may be deemed advisable and to cooperate with the officers of the United States having charge of the grazing of livestock on forest reserve lands for the protection and preservation of the grazing areas on the state lands contiguous to national forests and for the administration of the provisions of RCW 79.28.040 and 79.28.050. [1983 c 3 § 202; 1923 c 85 § 2; RRS § 7826-2.]

79.28.070 Improvement of grazing ranges—Agreements. The department of natural resources is

hereby authorized on behalf of the state of Washington to enter into cooperative agreements with any person as defined in RCW 1.16.080 for the improvement of the state's grazing ranges by the clearing of debris, maintenance of trails and water holes and other requirements for the general improvement of the grazing ranges. [1963 c 99 § 1; 1955 c 324 § 1.]

79.28.080 Improvement of grazing ranges—Extension of duration of permit—Reduction of fees. In order to encourage the improvement of grazing ranges by holders of grazing permits, the department of natural resources shall consider (1) extension of grazing permit periods to a maximum of ten years, and (2) reduction of grazing fees, in situations where the permittee contributes or agrees to contribute to the improvement of the range, financially, by labor, or otherwise. [1985 c 197 § 3; 1979 ex.s. c 109 § 21; 1955 c 324 § 2.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.01.093.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

Chapter 79.36

EASEMENTS OVER PUBLIC LANDS

Sections	
79.36.230	Easement reserved in later grants for removal of materials, etc.
79.36.240	Private easement over state lands subject to common user.
79.36.250	Easement over public lands subject to common user.
79.36.260	Reservations in grants and leases.
79.36.270	Duty of utilities and transportation commission.
79.36.280	Penalty for violating utilities and transportation commission's order.
79.36.290	Applications—Appraisal—Certificate—Forfeiture—Fee.
79.36.300	Access to state timber.

Access to state timber: Chapter 76.16 RCW.

Diking district right of way: RCW 85.05.080.

Flood control district right of way: Chapter 86.09 RCW.

Reclamation district right of way: RCW 89.30.223.

79.36.230 Easement reserved in later grants for removal of materials, etc. All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right of way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the manufactured products thereof from such state land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest

thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1.]

Severability—1927 c 312: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional." [1927 c 312 § 8.] This applies to RCW 79.36.230 through 79.36.290.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.01.312.

79.36.240 Private easement over state lands subject to common user. Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, of having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the utilities and transportation commission of the state of Washington. [1983 c 4 § 7; 1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2.]

Similar enactment: RCW 79.01.316.

79.36.250 Easement over public lands subject to common user. Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof hereafter acquiring state

lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3.]

Similar enactment: RCW 79.01.320.

79.36.260 Reservations in grants and leases. Whenever any person, firm or corporation shall hereafter purchase, lease or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral or other natural products thereon, or the manufactured products thereof the purchase, lease or grant shall be subject to the condition or reservation that such person, firm or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, owned, leased or operated by such person, firm or corporation, or their successors in interest, accord to any other person, firm or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting[,] manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations and upon payment of just and reasonable charges therefor; and that any conveyance, lease or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, shall be subject to the right of the person, firm or corporation, or their successors in interest, having the right to remove timber, stone, mineral or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products and the manufactured products thereof and all necessary

machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules, regulations and upon payment of just and reasonable charges therefor; and such purchase, lease or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, not owned, controlled, or operated by the person, firm or corporation owning or having the right to remove, and about to remove such timber, stone, mineral or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW 79.36.230 through 79.36.290 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm or corporation and their successors in interest, having the right to remove any timber, stone, mineral or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products and under reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 4; RRS § 8107-4.]

79.36.270 Duty of utilities and transportation commission. Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.230 through 79.36.290 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules, regulations and charges concerning the transportation of timber, stone, mineral or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such products, the state or such person, firm or corporation owning and desiring to ship such products may apply to the utilities and transportation commission and have the reasonableness of the rules, regulations and charges inquired into and it shall be the

duty of the utilities and transportation commission to inquire into the same in the same manner, and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [1983 c 4 § 8; 1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4.]

Similar enactment: RCW 79.01.324.

79.36.280 Penalty for violating utilities and transportation commission's order. In case any person, firm or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement subject to the provisions of RCW 79.36.230 through 79.36.290 shall fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry as provided for in RCW 79.36.270, each person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right of way over state lands theretofore granted to such person, firm or corporation, and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold. [1983 c 4 § 9; 1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5.]

Similar enactment: RCW 79.01.328.

79.36.290 Applications—Appraisal—Certificate—Forfeiture—Fee. Any person, firm or corporation shall have a right of way over public lands, subject to the provisions of RCW 79.36.230 through 79.36.290, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right of way grant shall become effective, a written application for and a plat showing the location of such right of way, with reference to the adjoining lands, shall be filed with the state land commissioner, and all timber on said right of way, together with the damages to said land, shall be appraised and paid for in cash by the person, firm or corporation applying for such right of way. The state land commissioner shall then cause to be issued in duplicate to such person, firm or corporation a right of way certificate setting forth the conditions and terms upon which such right of way is granted. Whenever said right of way shall cease to be used, for a period of two years, for the

purpose for which it was granted, it shall be deemed forfeited, and said right of way certificate shall contain such a provision: *Provided*, That any right of way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records in the office of the commissioner of public lands. One copy of each certificate shall be filed in the office of the commissioner of public lands and one copy delivered to the applicant. The forfeiture of said right of way, as herein provided, shall be rendered effective by the mailing of notice of such forfeiture to the grantee thereof to his last known post office address and by stamping the copy of said certificate in the office of the commissioner of public lands canceled and the date of such cancellation. For the issuance of such certificate the same fee shall be charged as provided in the case of certificates for railroad rights of way. [1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45.]

Certificates for railroad rights of way: RCW 79.01.364.

Fees, generally: RCW 79.01.720.

Similar enactment: RCW 79.01.332 and 79.01.336.

79.36.300 Access to state timber. See chapter 76.16 RCW.

Chapter 79.38 ACCESS ROADS

Sections

79.38.010	Acquisition of property for access to public or state forest lands from public highway.
79.38.020	Department's powers—Exchange of easement rights—Provide, maintain, or dispose of access roads.
79.38.030	Use of roads by purchasers of valuable materials—Terms—Charges.
79.38.040	Permits for use of roads—Regulations.
79.38.050	Access road revolving fund—Composition—Use.
79.38.060	Use of moneys not deposited in revolving fund.
79.38.900	Severability—1961 c 44.

79.38.010 Acquisition of property for access to public or state forest lands from public highway. In addition to any authority otherwise granted by law, the department of natural resources shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands or state forest lands from any public highway. [1961 c 44 § 1.]

79.38.020 Department's powers—Exchange of easement rights—Provide, maintain, or dispose of access roads. To facilitate the carrying out of the purpose of this chapter, the department of natural resources may:

(1) Grant easements, rights of way, and permits to cross public lands and state forest lands to any person in exchange for similar rights over lands not under its jurisdiction;

(2) Enter into agreements with any person or agency relating to purchase, construction, reconstruction, maintenance, repair, regulation, and use of access roads or public roads used to provide access to public lands or state forest lands;

(3) Dispose, by sale, exchange, or otherwise, of any interest in an access road in the event it determines such interest is no longer necessary for the purposes of this chapter. [1981 c 204 § 1; 1961 c 44 § 2.]

79.38.030 Use of roads by purchasers of valuable materials—Terms—Charges. Purchasers of valuable materials from public lands or state forest lands may use access roads or public roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department of natural resources:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads or public roads which have been constructed or reconstructed through funding by the department of natural resources. [1981 c 204 § 2; 1961 c 44 § 3.]

79.38.040 Permits for use of roads—Regulations. Whenever the department of natural resources finds that it is for the best interest of the state and where the rights acquired by the state will permit, the department may grant permits for the use of access roads to any person. Any permit issued under the authority of this section shall be subject to reasonable regulation by the department. Such regulation shall include, but is not limited to, the following matters:

(1) Requirements for construction, reconstruction, maintenance, and repair;

(2) Limitations as to extent and time of use;

(3) Provision for revocation at the discretion of the department; and

(4) Charges for use. [1961 c 44 § 4.]

79.38.050 Access road revolving fund—Composition—Use. The department of natural resources shall create, maintain, and administer a revolving fund, to be known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in maintaining, repairing, and reconstructing access roads, or public roads used to provide access to public lands or state forest lands. The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature. [1981 c 204 § 3; 1961 c 44 § 5.]

79.38.060 Use of moneys not deposited in revolving fund. All moneys received by the department of natural resources from users of access roads which are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition, construction or improvement of the access road or public road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands and state forest lands, to which access is provided, are pledged by law or constitutional provision, in which case the department of natural resources shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another. [1981 c 204 § 4; 1961 c 44 § 6.]

79.38.900 Severability—1961 c 44. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 44 § 7.]

Chapter 79.40 TRESPASS

Sections

79.40.070	Cutting, breaking, removing Christmas trees— Compensation.
79.40.080	Construction—1937 c 87.
79.40.090	Firewood on state lands.

Penalty for destroying rhododendron and other native flora on state lands: RCW 47.40.080.

Trespass: Chapter 64.12 RCW.

79.40.070 Cutting, breaking, removing Christmas trees—Compensation. It shall be unlawful for any person to enter upon any of the state lands, including all land under the jurisdiction of the *state forest board, or upon any private land without the permission of the owner thereof and to cut, break or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking or removing or causing to be cut, broken or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is made immediately upon demand. Should it be necessary to institute civil action to recover the value of such trees, the state in the case of state lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed. [1955 c 225 § 1; 1937 c 87 § 1; RRS § 8074-1.]

*Reviser's note: The powers and duties of the "state forest board" have been transferred to the department of natural resources. See reviser's note following Title 79 RCW digest.

79.40.080 Construction—1937 c 87. RCW 79.40.070 is not intended to repeal or modify any of the provisions of existing statutes providing penalties for the unlawful removal of timber from state lands. [1937 c 87 § 2; RRS § 8074-2.]

79.40.090 Firewood on state lands. See chapter 76-.20 RCW.

Chapter 79.44

ASSESSMENTS AGAINST PUBLIC LANDS

Sections

79.44.003	"Assessing district" defined.
79.44.010	Public lands subject to local assessments.
79.44.020	State to be charged its proportion of cost—Construction of chapter.
79.44.030	Apportioning cost on leaseholds.
79.44.040	Notice to state of intention to improve—Consent—Notice to port commission.
79.44.050	Certification of roll—Penalties, interest.
79.44.060	Payment procedure—State lands not subject to lien, exception.
79.44.070	Enforcement against lessee or contract holder.
79.44.080	Foreclosure against leasehold or contract interest—Cancellation of lease or contract.
79.44.090	Payment by state after forfeiture of lease or contract.
79.44.095	Assessments paid by state to be added to purchase price of land.
79.44.100	Assignment of lease or contract to purchaser at foreclosure sale.
79.44.120	When assessments need not be added in certain cases.
79.44.130	Local provisions superseded.
79.44.140	Application of chapter—Eminent domain assessments.
79.44.180	Director of financial management to adopt rules and regulations.
79.44.190	Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments.
79.44.900	Severability—1963 c 20.

Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

Diking, drainage and sewerage improvement district assessments: RCW 85.08.370.

Diking and drainage district assessments: RCW 85.05.390.

Flood control district assessments: RCW 86.09.523, 86.09.526, 86.09.529.

Intercounty diking and drainage district assessments: RCW 85.24.275.

Irrigation district assessments: RCW 87.03.025.

79.44.003 "Assessing district" defined. As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water districts;
- (7) Sewer districts;
- (8) Counties; and
- (9) Any municipal corporation or public agency having power to levy local improvement or other assessments which by statute are expressly made applicable to lands of the state. [1971 ex.s. c 234 § 14; 1963 c 20 § 1.]

79.44.010 Public lands subject to local assessments. All lands, including school lands, granted lands, escheated lands, or other lands, held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any assessing district in this state, may be assessed and charged for the cost of local

or other improvements specially benefiting such lands which may be ordered by the proper authorities of any such assessing district and may be assessed by any irrigation district to the same extent as private lands within the district are assessed: *Provided*, That the leasehold, contractual, or possessory interest of any person, firm, association, or private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual, or possessory interest is benefited: *Provided, further*, That no lands of the state shall be included within an irrigation district except as provided in RCW 87.03.025 and 89.12.090. [1982 1st ex.s. c 21 § 178; 1963 c 20 § 2; 1919 c 164 § 1; RRS § 8125. Cf. 1909 c 154 §§ 1, 4.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.44.020 State to be charged its proportion of cost—Construction of chapter. In all local improvement assessment districts in any assessing district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this chapter that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting state lands: *Provided*, That none of the provisions of this chapter shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants or conditions of the contract under which any such lands or property are leased or held by any such lessee. [1963 c 20 § 3; 1919 c 164 § 2; RRS § 8126. Cf. 1909 c 154 § 5.]

79.44.030 Apportioning cost on leaseholds. Where state lands are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which said lease has yet to run. [1919 c 164 § 3; RRS § 8127. Cf. 1909 c 154 § 3; 1907 c 74 § 3.]

79.44.040 Notice to state of intention to improve—Consent—Notice to port commission. Notice of the intention to make such improvement, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed for said improvement, shall be forwarded by registered or certified mail to the director of financial management and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date fixed for hearing on the resolution or petition initiating said improvement. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas

and state tidelands until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to said tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of said improvement against any leasehold, contractual or possessory interest in and to any tideland or harbor area owned by the state: *Provided, however*, That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of said port district. [1979 c 151 § 177; 1963 c 20 § 4; 1919 c 164 § 4; RRS § 8128. Cf. 1909 c 154 § 6.]

79.44.050 Certification of roll—Penalties, interest. Upon the approval and confirmation of the assessment roll for any local improvement ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the director of financial management and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, in accordance with such rules and regulations as the director of financial management may provide, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll for the cost of such improvement, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case said land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his office of the cost of such improvement upon the lands occupied, used, or under the jurisdiction of his agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same improvement district. [1979 c 151 § 178; 1963 c 20 § 5; 1933 c 108 § 1; 1919 c 164 § 5; RRS § 8129. Cf. 1909 c 154 § 6; 1907 c 74 §§ 1, 2, 4, 5.]

79.44.060 Payment procedure—State lands not subject to lien, exception. When the chief administrative officer of an agency of state government is satisfied that an assessing district has complied with all the conditions precedent to the levy of assessments for district purposes, pursuant to this chapter against state lands occupied, used, or under the jurisdiction of his agency, he shall pay them, together with any interest thereon from any funds specifically appropriated to his agency therefor or from any funds of his agency which under existing law have been or are required to be expended to pay assessments on a current basis. In all other cases, the chief administrative officer shall certify to the director of financial management that the assessment is one properly

chargeable to the state. The director of financial management shall pay such assessments from funds available or appropriated to him for this purpose.

Except as provided in RCW 79.44.190 no lands of the state shall be subject to a lien for unpaid assessments, nor shall the interest of the state in any land be sold for unpaid assessments where assessment liens attached to the lands prior to state ownership. [1979 c 151 § 179; 1971 ex.s. c 116 § 2; 1963 c 20 § 6; 1947 c 205 § 1; Rem. Supp. 1947 § 8136a.]

79.44.070 Enforcement against lessee or contract holder. When any assessing district has made or caused to be made an assessment against such leasehold, contractual or possessory interest for any such local improvement, the treasurer of said assessing district shall immediately give notice to the director of financial management and to the chief administrative officer of the agency having jurisdiction over the lands. Said assessment shall become a lien against the leasehold, contractual or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: *Provided*, That said assessment shall not be made payable in installments unless the owner of such leasehold, contractual or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due. [1979 c 151 § 180; 1963 c 20 § 7; 1919 c 164 § 6; RRS § 8130. Cf. 1909 c 154 § 2.]

79.44.080 Foreclosure against leasehold or contract interest—Cancellation of lease or contract. Whenever any assessing district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual or possessory interest, the director of financial management and the chief administrative officer of the agency having jurisdiction over the lands shall be notified by registered or certified mail of such action and furnished a statement of all assessments against such leasehold, contractual or possessory interest, and the chief administrative officer or director of financial management shall cause the amount of such assessments to be paid as provided in RCW 79.44.060, and upon the receipt of an assignment from such assessing district, the chief administrative officer shall cancel such lease or contract: *Provided, however*, That unless the assessing district making said local improvement and levying said special assessment shall have used due diligence in the foreclosure thereof, the chief administrative officer and the director of financial management shall not be required to pay any sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in said property: *And provided further*, That if such delinquent assessment or installment shall be against a leasehold interest in fresh water harbor areas within a port district, the chief administrative officer shall notify the commissioners of said port district of the receipt of such assignment, and said commissioners shall

forthwith cancel such lease. [1979 c 151 § 181; 1963 c 20 § 8; 1919 c 164 § 7; RRS § 8131.]

79.44.090 Payment by state after forfeiture of lease or contract. If by reason of default in the payment of rentals or installments, or other causes, the state shall cancel any lease or contract against which assessments have been levied as herein provided, the chief administrative officer of the agency having jurisdiction over the lands shall cause such assessments or installments as shall fall due subsequent to the cancellation of said contract or leasehold interest to be paid as provided in RCW 79.44.060, the same as if the assessments or installments thereof had been levied on the state's interest in said lands. [1963 c 20 § 9; 1919 c 164 § 8; RRS § 8132.]

79.44.095 Assessments paid by state to be added to purchase price of land. When any land, other than lands occupied and used in connection with state institutions, owned or held by the state within incorporated cities, towns, diking, drainage or port districts in this state, against which local improvement assessments have been paid, as herein provided for, is offered for sale, there shall be added to the appraised value of such land, as provided by law, such portion of the local improvement assessment paid by the state as shall be deemed to represent the value added to such lands by such improvement for the purpose of sale, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, in addition to the amounts otherwise due to the state for said land, and no deed shall ever be executed until such local improvement assessments have been paid, and nothing herein shall be construed as canceling any unpaid assessments on the land so sold by the state, but such land shall be sold subject to all assessments unpaid at the time of sale. [1919 c 164 § 9; RRS § 8133. Cf. 1909 c 154 § 7.]

Assessments paid to be added to purchase price of land: RCW 79.01.728.

79.44.100 Assignment of lease or contract to purchaser at foreclosure sale. Whenever any such tide, state, school, granted or other lands situated within the limits of any assessing district, has been included within any local improvement district by such assessing district, and the contract, leasehold or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold or other interest purchased by him, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his predecessor in interest was obligated to pay. [1963 c 20 § 10; 1919 c 164 § 10; RRS § 8134. Cf. 1909 c 154 § 10.]

79.44.120 When assessments need not be added in certain cases. Whenever any state school, granted, tide or other public lands of the state shall have been

charged with local improvement assessments under any local improvement assessment district in any incorporated city, town, irrigation, diking, drainage, port, weed or pest district, or any other district now authorized by law to levy assessments against state lands, where such assessments are required under existing statutes to be returned to the fund of the state treasury from which said assessments were originally paid, the commissioner of public lands may, and he is hereby authorized, to sell such lands for their appraised valuation without regard to such assessments, anything to the contrary in the existing statutes notwithstanding: *Provided*, That nothing herein contained shall be construed to alter in any way any existing statute providing for the method of procedure in levying assessments against state lands in any of such local improvement assessment districts. [1937 c 80 § 1; RRS § 7797-192a.]

79.44.130 Local provisions superseded. The provisions of this chapter shall apply to all assessing districts as herein defined, any charter or ordinance provisions to the contrary notwithstanding. [1963 c 20 § 11; 1919 c 164 § 11; RRS § 8135. Cf. 1909 c 154 § 8.]

79.44.140 Application of chapter—Eminent domain assessments. The provisions of this chapter shall apply to all local improvements initiated after June 11, 1919, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: *Provided*, That in case of eminent domain assessments, it shall not be necessary to forward notice of the intention to make such improvement, but the eminent domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment roll with the court in the manner provided by law, forward by registered or certified mail to the director of financial management and to the chief administrative officer of the agency using, occupying or having jurisdiction over the lands a notice of such assessment, and of the day fixed by the court for the hearing thereof: *Provided*, That no assessment against the state's interest in tidelands or harbor areas shall be binding against the state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll. [1979 c 151 § 182; 1963 c 20 § 12; 1919 c 164 § 12; RRS § 8136.]

79.44.180 Director of financial management to adopt rules and regulations. The director of financial management shall adopt rules and regulations:

(1) Governing the preparation, certification, and submission of all notices and statements required by chapter 79.44 RCW as now or hereafter amended;

(2) Authorizing and prescribing additional reports, records, and information necessary to achieve budgetary objectives in accordance with chapter 43.88 RCW and any appropriation hereafter made;

(3) Assuring the payment of all assessments properly chargeable to the state; and

(4) Protecting the state against illegal or inequitable assessments. [1979 c 151 § 183; 1963 c 20 § 14.]

79.44.190 Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments. When real property subject to an unpaid special assessment for a local improvement levied by any political subdivision of the state authorized to form local improvement or utility local improvement districts is acquired by purchase or condemnation by the state or any political subdivision thereof, including but not limited to any special purpose district, the property so acquired shall continue to be subject to the assessment lien.

An assessment lien or installment thereof, delinquent at the time of such acquisition shall be paid at the time of acquisition, and the amount thereof, including any accrued interest and delinquent penalties, shall be withheld from the purchase price or condemnation award by the public body acquiring the property and shall be paid immediately to the county, city, or town treasurer, whichever is applicable, in payment of and discharge of such delinquent installment lien.

Any installment or installments not delinquent at the time of acquisition shall become due and payable in such year and at such date as said installment would have become due if such property had not been so acquired: *Provided*, That where such property is acquired by the state of Washington, the balance of the assessment shall be paid in full at the time of acquisition.

For the purpose of this section, the "time of acquisition" shall mean the date of completion of the sale, date of condemnation verdict, date of the order of immediate possession and use pursuant to RCW 8.04.090, or the date of judgment, if not tried to a jury. [1971 ex.s. c 116 § 1.]

79.44.900 Severability—1963 c 20. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 20 § 16.]

Chapter 79.60

SUSTAINED YIELD COOPERATIVE AGREEMENTS

Sections

79.60.010	Cooperation.
79.60.020	Cooperative units.
79.60.030	Limitations on agreements.
79.60.040	Easement over state land during life of agreement.
79.60.050	Sale agreements.
79.60.060	Minimum price—Alternative bases—Bids and awards.
79.60.070	Contracts—Requirements.
79.60.080	Transfer or assignment of contract of purchase.
79.60.090	Performance bond—Cash deposit.

Reviser's note: The powers and duties of certain agencies mentioned this chapter have devolved upon the department of natural resources. See reviser's note following Title 79 RCW digest.

79.60.010 Cooperation. The state forest board with regard to state forest board lands, and the commissioner of public lands with regard to state granted lands, are

hereby authorized to enter into cooperative agreements with the United States of America, Indian tribes, and private owners of timber land providing for coordinated forest management, including time, rate and method of cutting timber and method of silvicultural practice on a sustained yield unit. Wherever applicable in this chapter, it shall be understood that the state forest board shall have complete authority over state forest board lands and the commissioner of public lands complete authority over state granted land. [1941 c 123 § 1; 1939 c 130 § 1; Rem. Supp. 1941 § 7879-11. Formerly RCW 79.52.070.]

79.60.020 Cooperative units. The state forest board and the commissioner of public lands are hereby authorized and directed to determine, define and declare informally the establishment of a sustained yield unit, comprising the land area to be covered by any such cooperative agreement and include therein such other lands as may be later acquired by the state forest board and included under the cooperative agreement. [1939 c 130 § 2; RRS § 7879-12. Formerly RCW 79.52.080.]

79.60.030 Limitations on agreements. The state shall agree that the cutting from combined national forest and state lands will be limited to the sustained yield capacity of these lands in the management unit as determined by the contracting parties and approved by the state forest board and the commissioner of public lands. Cooperation with the private contracting party or parties shall be contingent on limitation of production to a specified amount as determined by the contracting parties and approved by the state forest board and the commissioner of public lands and shall comply with the other conditions and requirements of such cooperative agreement. [1939 c 130 § 3; RRS § 7879-13. Formerly RCW 79.52.090.]

79.60.040 Easement over state land during life of agreement. The private contracting party or parties shall enjoy the right of easement over state forest board lands and state granted lands included under said cooperative agreement for railway, road and other uses necessary to the carrying out of the agreement. This easement shall be only for the life of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty days from date of cutting, removal and/or damage of such timber and appraisal thereof by the commissioner of public lands and the state forest board. [1941 c 123 § 2; Rem. Supp. 1941 § 7879-13a. Formerly RCW 79.52.110.]

79.60.050 Sale agreements. During the period when any such cooperative agreement is in effect, the timber on the state lands which the state forest board and the commissioner of public lands determine shall be included in the sustained yield unit may, from time to time, be

sold at not less than its appraised value as approved by the state forest board and the commissioner of public lands, due consideration being given to existing forest conditions on all lands included in the cooperative management unit and such sales may be made in the discretion of the state forest board and the commissioner of public lands and the contracting party or parties in the cooperative sustained yield agreement. These sale agreements shall contain such provisions as are necessary to effectually permit the state forest board and the commissioner of public lands to carry out the purpose of this section and in other ways afford adequate protection to the public interests involved. [1939 c 130 § 4; RRS § 7879-14. Formerly RCW 79.52.100.]

79.60.060 Minimum price—Alternative bases—Bids and awards. The sale of timber upon state forest board land and state granted land within such sustained yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands: *Provided*, That, if in the judgment of the state forest board or the commissioner of public lands, it is to the best interests of the state to do so, said timber or any such sustained yield unit or units may be sold on a stumpage or scale basis for a price per thousand not less than the appraised value thereof. The state forest board and the commissioner of public lands shall reserve the right to reject any and all bids if the intent of this chapter will not be carried out. Permanency of local communities and industries, prospects of fulfillment of contract requirements, and financial position of the bidder shall all be factors included in this decision. [1939 c 130 § 5; RRS § 7879-15. Formerly RCW 79.52.040.]

79.60.070 Contracts—Requirements. A written contract shall be entered into with the successful bidder which shall fix the time when logging operations shall be commenced and concluded and require monthly payments for timber removed as soon as scale sheets have been tabulated and the amount of timber removed during the month determined, or require payments monthly in advance at the discretion of the board or the commissioner. The board and the commissioner shall designate the price per thousand to be paid for each species of timber and shall provide for supervision of logging operations, the methods of scaling and report, and shall require the purchaser to comply with all laws of the state of Washington with respect to fire protection and logging operation of the timber purchased; and shall contain such other provisions as may be deemed advisable. [1939 c 130 § 6; RRS § 7879-16. Formerly RCW 79.52.050, part.]

79.60.080 Transfer or assignment of contract of purchase. No transfer or assignment by the purchaser shall be valid unless the transferee or assignee is acceptable to the commissioner of public lands and the state forest board and the transfer or assignment approved by them in writing. [1941 c 123 § 3; Rem. Supp. 1941 § 7879-16a. Formerly RCW 79.52.120.]

79.60.090 Performance bond—Cash deposit. The purchaser shall, at the time of executing the contract, deliver a performance bond or sureties acceptable in regard to terms and amount to the commissioner of public lands and the state forest board, but such performance bond or sureties shall not exceed ten percent of the estimated value of the timber purchased computed at the stumpage price and at no time shall exceed a total of fifty thousand dollars. The purchaser shall also be required to make a cash deposit equal to twenty percent of the estimated value of the timber purchased, computed at the stumpage bid. Upon failure of the purchaser to comply with the terms of the contract, the performance bond or sureties may be forfeited to the state upon order of the forest board or the commissioner of public lands.

At no time shall the amount due the state for timber actually cut and removed exceed the amount of the deposit as hereinabove set forth. The amount of the deposit shall be returned to the purchaser upon completion and full compliance with the contract by the purchaser, or it may, at the discretion of the purchaser, be applied on final payment on the contract. [1941 c 123 § 4; 1939 c 130 § 7; Rem. Supp. 1941 § 7879-17. Formerly RCW 79.52.060.]

Chapter 79.64

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.010	Definitions.
79.64.020	Resource management cost account—Use.
79.64.030	Expenditures of certain funds in account to be for lands of same trust—Use for other lands—Repayment—Accounting.
79.64.040	Deductions from proceeds of all transactions authorized—Limitations.
79.64.050	Deductions to be paid into account.
79.64.055	Interest—Apportionment—Disposition.
79.64.060	Rules relating to account.
79.64.070	Severability—1961 c 178.

79.64.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Account" means the resource management cost account in the state general fund.

(2) "Department" means the department of natural resources.

(3) "Board" means the board of natural resources of the department of natural resources.

(4) "Rule" means rule as the same is defined by RCW 34.04.010.

(5) The definitions set forth in RCW 79.01.004 shall be applicable. [1967 ex.s. c 63 § 1; 1961 c 178 § 1.]

79.64.020 Resource management cost account—Use. A resource management cost account in the state treasury is hereby created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and

administering public lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights of way as authorized under the provisions of this title. Appropriations from the account to the department shall be expended for no other purposes. Funds in the account may be appropriated or transferred by the legislature for the benefit of the trust from which the funds were derived. [1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—1981 c 4: See note following RCW 28A.40.100.

79.64.030 Expenditures of certain funds in account to be for lands of same trust—Use for other lands—Repayment—Accounting. Funds in the account derived from the gross proceeds of leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering public lands of the same trust: *Provided*, That such funds may be used for similar costs and expenses in managing and administering other lands managed by the department: *Provided further*, That such expenditures that have been or may be made on such other lands shall be repaid to the resource management cost account together with interest at the rate provided for in RCW 79.01.216.

An accounting shall be made annually of the accrued expenditures as regards each trust. In the event the accounting determines that expenditures have been made from moneys derived from one category of trust lands for the benefit of another trust or other lands, such expenditure shall be considered a debt against the trust benefited and shall be considered an encumbrance against the property of the trust or trust funds benefited, including property held under chapter 76.12 RCW. The results of the accounting shall be reported to the legislature at the next regular session. [1977 ex.s. c 159 § 2; 1961 c 178 § 3.]

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting public lands. Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.01.132 and 79.01.204 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section. The deductions authorized under this section shall in no event exceed twenty-five percent of the total sum received by the department in connection with any one transaction pertaining to public lands other than second

class tide and shore lands and the beds of navigable waters, and fifty percent of the total gross proceeds received by the department pertaining to second class tide and shore lands and the beds of navigable waters. [1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17: "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of fourteen million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

79.64.050 Deductions to be paid into account. All deductions from gross proceeds made in accordance with RCW 79.64.040 shall be paid into the account and the balance shall be paid into the state treasury to the credit of the fund otherwise entitled to the proceeds. [1961 c 178 § 5.]

79.64.055 Interest—Apportionment—Disposition. Interest earned by trust moneys in the resource management cost account shall be deemed trust income to be apportioned according to the source and paid into the appropriate fund in the state treasury. Interest earned by other than trust moneys shall be paid into the general fund of the state treasury. [1967 ex.s. c 63 § 3.]

79.64.060 Rules relating to account. The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of RCW 79.64.010 through 79.64.070. [1983 c 3 § 203; 1961 c 178 § 6.]

79.64.070 Severability—1961 c 178. If any provision of RCW 79.64.010 through 79.64.070, or its application to any person or circumstance is held invalid, the remainder of RCW 79.64.010 through 79.64.070, or the application of the provision to other persons or circumstances is not affected. [1983 c 3 § 204; 1961 c 178 § 7.]

Chapter 79.66 LAND BANK

Sections

79.66.010	Legislative finding.
79.66.020	Land bank—Created—Purchase of property authorized.

(1987 Ed.)

79.66.030	Exchange or sale of property held in land bank.
79.66.040	Management of property held in land bank.
79.66.050	Appropriation of funds from forest development account or resource management cost account—Use of income.
79.66.060	Reimbursement for costs and expenses.
79.66.070	Land bank technical advisory committee.
79.66.080	Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands.
79.66.090	Exchange of urban land for land bank land—Purchase by county, city, town, or state agency.
79.66.100	Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.
79.66.900	Severability—1984 c 222.
79.66.901	Effective date—1984 c 222.

79.66.010 Legislative finding. The legislature finds that from time to time it may be desirable for the department of natural resources to sell state lands which have low potential for natural resource management or low income-generating potential or which, because of geographic location or other factors, are inefficient for the department to manage. However, it is also important to acquire lands for long-term management to replace those sold so that the publicly owned land base will not be depleted and the publicly owned forest land base will not be reduced. The purpose of this chapter is to provide a means to facilitate such sales and purchases so that the diversity of public uses on the trust lands will be maintained. In making the determinations, the department shall comply with local land use plans and applicable growth management principles. [1984 c 222 § 1; 1977 ex.s. c 109 § 1.]

79.66.020 Land bank—Created—Purchase of property authorized. The department of natural resources, with the approval of the board of natural resources, may purchase property at fair market value to be held in a land bank, which is hereby created within the department. Property so purchased shall be property which would be desirable for addition to the public lands of the state because of the potential for natural resource or income production of the property. The total acreage held in the land bank shall not exceed one thousand five hundred acres. [1984 c 222 § 2; 1977 ex.s. c 109 § 2.]

79.66.030 Exchange or sale of property held in land bank. The department of natural resources, with the approval of the board of natural resources, may:

(1) Exchange property held in the land bank for any other public lands of equal value administered by the department of natural resources, including any lands held in trust.

(2) Exchange property held in the land bank for property of equal or greater value which is owned publicly or privately, and which has greater potential for natural resource or income production or which could be more efficiently managed by the department, however, no power of eminent domain is hereby granted to the department; and

(3) Sell property held in the land bank in the manner provided by law for the sale of state lands without any

requirement of platting and to use the proceeds to acquire property for the land bank which has greater potential for natural resource or income production or which would be more efficiently managed by the department. [1984 c 222 § 3; 1977 ex.s. c 109 § 3.]

79.66.040 Management of property held in land bank. The department of natural resources may manage the property held in the land bank as provided in RCW 79.01.612: *Provided*, That such properties or interest in such properties shall not be withdrawn, exchanged, transferred, or sold without first obtaining payment of the fair market value of the property or interest therein or obtaining property of equal value in exchange. [1984 c 222 § 4; 1977 ex.s. c 109 § 4.]

79.66.050 Appropriation of funds from forest development account or resource management cost account—Use of income. The legislature may authorize appropriation of funds from the forest development account or the resource management cost account for the purposes of this chapter. Income from the sale or management of property in the land bank shall be returned as a recovered expense to the forest development account or the resource management cost account and may be used to acquire property under RCW 79.66.020. [1984 c 222 § 5; 1977 ex.s. c 109 § 5.]

Forest development account: RCW 76.12.110.

Resource management cost account: RCW 79.64.020.

79.66.060 Reimbursement for costs and expenses. The department of natural resources shall be reimbursed for actual costs and expenses incurred in managing and administering the land bank program under this chapter from the forest development account or the resource management cost account in an amount not to exceed the limits provided in RCW 79.64.040. Reimbursement from proceeds of sales shall be limited to marketing costs provided in RCW 79.01.612. [1984 c 222 § 6.]

79.66.070 Land bank technical advisory committee. (1) There is created a land bank technical advisory committee, consisting of three members. Membership shall consist of: One member qualified by experience and training in matters pertaining to land use planning and real estate appointed by the commissioner of public lands, one member qualified by experience and training in public trust matters appointed by the superintendent of public instruction, and one member qualified by experience and training in financial matters appointed by the state treasurer.

(2) The technical advisory committee shall provide professional advice and counsel to the board of natural resources regarding land bank sales, purchases, and exchanges involving urban property.

(3) Members of the technical advisory committee shall be appointed for five-year terms and shall serve until a successor is appointed. In the case of a vacancy the vacancy shall be filled by the appointing authority. The initial term of the appointee of the commissioner

shall expire in three years. The initial term of the appointee of the superintendent shall expire in four years. The initial term of the appointee of the treasurer shall expire in five years. All terms expire December 31.

(4) Members of the technical advisory committee shall be reimbursed for travel expenses incurred in the performance of their duties under RCW 43.03.050 and 43.03.060. [1984 c 222 § 7.]

79.66.080 Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands. Periodically, at intervals to be determined by the board of natural resources, the department of natural resources shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the departments of fisheries, *game, parks and recreation, and general administration, and to the county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board of natural resources shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984. [1984 c 222 § 8.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

79.66.090 Exchange of urban land for land bank land—Purchase by county, city, town, or state agency.

If the department of natural resources determines to exchange urban land for land bank land, the county, city, or town in which the land is situated, and state agencies, shall be notified in writing of the determination. The county, city, town, or state agency has sixty days from the date of notice by the department to submit an application to purchase the land and shall be afforded an opportunity of up to one year, as determined by the board of natural resources, to purchase the land from the land bank at fair market value. The board of natural resources, if it deems it in the best interest of the state, may extend the period under terms and conditions as the board determines. If competing applications are received from governmental entities, the board shall select the application which results in the highest monetary value. [1984 c 222 § 9.]

79.66.100 Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.

Lands purchased by the department of natural resources for commercial, industrial, or residential use shall be subject to payment of in-lieu of real property tax for the period in which they are held in the land bank. The in-lieu payment shall be equal to the property taxes which would otherwise be paid if the land remained subject to the tax. Payment shall be made at the end of the calendar year to the county in which the land is located. If a parcel is not held in the land bank for the entire year, the in-lieu payment shall be reduced proportionately to reflect only that period of time in which the land was held in the land bank. The county treasurer shall distribute the in-lieu payments proportionately in accordance with RCW 84.56.230 as though such moneys were receipts from ad valorem property taxes. [1984 c 222 § 10.]

79.66.900 Severability—1984 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 222 § 15.]

79.66.901 Effective date—1984 c 222. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1984. [1984 c 222 § 16.]

Chapter 79.68**MULTIPLE USE CONCEPT IN MANAGEMENT AND ADMINISTRATION OF STATE-OWNED LANDS**

Sections

79.68.010	Concept to be utilized, when.
79.68.020	"Multiple use" defined.
79.68.030	"Sustained yield plans" defined.
79.68.035	Definitions.

(1987 Ed.)

79.68.040	Department to periodically adjust acreages under sustained yield management program—Calculation of sustainable harvest level.
79.68.045	Existence of arrearage at end of planning decade—Analysis of alternative courses of action—Sale of arrearage.
79.68.050	Multiple uses compatible with financial obligations of trust management—Other uses permitted, when.
79.68.060	Public lands identified and withdrawn from conflicting uses—Effect—Limitation.
79.68.070	Scope of department's authorized activities.
79.68.080	Fostering use of aquatic environment—Limitation.
79.68.090	Multiple use land resource allocation plan—Adoption—Factors considered.
79.68.100	Conferring with other agencies—Public hearings authorized.
79.68.110	Compliance with local ordinances, when.
79.68.120	Land use data bank—Contents, source—Consultants authorized—Use.
79.68.900	Department's existing authority and powers preserved.
79.68.910	Existing withdrawals for state park and state game purposes preserved.

79.68.010 Concept to be utilized, when. The legislature hereby directs that a multiple use concept be utilized by the department of natural resources in the management and administration of state-owned lands under the jurisdiction of the department where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable trust provisions of the various lands involved. [1971 ex.s. c 234 § 1.]

79.68.020 "Multiple use" defined. "Multiple use" as used in RCW 79.01.128, 79.44.003 and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department of natural resources to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.68.010. [1971 ex.s. c 234 § 2.]

79.68.030 "Sustained yield plans" defined. "Sustained yield plans" as used in RCW 79.01.128, 79.44.003 and this chapter shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest. [1971 ex.s. c 234 § 3.]

79.68.035 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Arrearage" means the summation of the annual sustainable harvest timber volume since July 1, 1979, less the sum of state timber sales contract default volume and the state timber sales volume deficit since July 1, 1979.

(2) "Default" means the volume of timber remaining when a contractor fails to meet the terms of the sales contract on the completion date of the contract or any extension thereof and timber returned to the state under RCW 79.01.1335.

(3) "Deficit" means the summation of the difference between the department's annual planned sales program volume and the actual timber volume sold.

(4) "Planning decade" means the ten-year period covered in the forest land management plan adopted by the board of natural resources.

(5) "Sustainable harvest level" means the volume of timber scheduled for sale from state-owned lands during a planning decade as calculated by the department of natural resources and approved by the board of natural resources. [1987 c 159 § 2.]

Legislative findings—1987 c 159: "Adequately funding construction of the state's educational facilities represents one of the highest priority uses of state-owned lands. Many existing facilities need replacement and many additional facilities will be needed by the year 2000 to house students entering the educational system. The sale of timber from state-owned lands plays a key role in supporting the construction of school facilities. Currently and in the future, demands for school construction funds are expected to exceed available revenues.

The department of natural resources sells timber on a sustained yield basis. Since 1980, purchasers defaulted on sales contracts affecting over one billion one hundred million board feet of timber. Between 1981 and 1983, the department sold six hundred million board feet of timber less than the sustainable harvest level. As a consequence of the two actions, the department entered their 1984-1993 planning decade with a timber sale arrearage which could be sold without adversely affecting the continued productivity of the state-owned forests." [1987 c 159 § 1.]

79.68.040 Department to periodically adjust acreages under sustained yield management program—Calculation of sustainable harvest level. The department of natural resources shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level. [1987 c 159 § 3; 1971 ex.s. c 234 § 4.]

Legislative findings—1987 c 159: See note following RCW 79.68.035.

79.68.045 Existence of arrearage at end of planning decade—Analysis of alternative courses of action—Sale of arrearage. If an arrearage exists at the end of any planning decade, the department shall conduct an analysis of alternatives to determine the course of action regarding the arrearage which provides the greatest return to the trusts based upon economic conditions then existing and forecast, as well as impacts on the environment of harvesting the additional timber. The department shall offer for sale the arrearage in addition to the sustainable harvest level adopted by the board of natural resources for the next planning decade if the analysis determined doing so will provide the greatest return to the trusts. [1987 c 159 § 4.]

Legislative findings—1987 c 159: See note following RCW 79.68.035.

79.68.050 Multiple uses compatible with financial obligations of trust management—Other uses permitted, when. Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;

- (2) Recreational trails for both vehicular and nonvehicular uses;

- (3) Special educational or scientific studies;

- (4) Experimental programs by the various public agencies;

- (5) Special events;

- (6) Hunting and fishing and other sports activities;

- (7) Maintenance of scenic areas;

- (8) Maintenance of historical sites;

- (9) Municipal or other public watershed protection;

- (10) Greenbelt areas;

- (11) Public rights of way;

- (12) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations. [1971 ex.s. c 234 § 5.]

79.68.060 Public lands identified and withdrawn from conflicting uses—Effect—Limitation. For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department of natural resources is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands. [1971 ex.s. c 234 § 6.]

79.68.070 Scope of department's authorized activities. The department of natural resources is hereby authorized to carry out all activities necessary to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter, including, but not limited to:

- (1) Planning, construction and operation of conservation, recreational sites, areas, roads and trails, by itself or in conjunction with any public agency;

- (2) Planning, construction and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency;

- (3) Improvement of any lands to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter;

- (4) Cooperation with public and private agencies in the utilization of such lands for watershed purposes;

- (5) The authority to make such leases, contracts, agreements or other arrangements as are necessary to accomplish the purposes of RCW 79.01.128, 79.44.003 and this chapter: *Provided*, That nothing herein shall affect any existing requirements for public bidding or auction with private agencies or parties, except that

agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, and nonprofit scientific and educational associations. [1987 c 472 § 12; 1971 ex.s. c 234 § 7.]

Severability—1987 c 472: See RCW 79.71.900.

79.68.080 Fostering use of aquatic environment—Limitation. The department of natural resources shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game and water. [1971 ex.s. c 234 § 8.]

79.68.090 Multiple use land resource allocation plan—Adoption—Factors considered. The department of natural resources may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter. [1971 ex.s. c 234 § 9.]

79.68.100 Conferring with other agencies—Public hearings authorized. The department of natural resources may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department of natural resources is empowered to hold public hearings from time to time to assist in achieving the purposes of RCW 79.01.128, 79.44.003 and this chapter. [1971 ex.s. c 234 § 10.]

79.68.110 Compliance with local ordinances, when. The department of natural resources may comply with county or municipal zoning ordinances, laws, rules or regulations affecting the use of state lands under the jurisdiction of the department of natural resources where such regulations are consistent with the treatment of similar private lands. [1971 ex.s. c 234 § 13.]

79.68.120 Land use data bank—Contents, source—Consultants authorized—Use. (1) The department of natural resources shall design expansion of its land use data bank to include additional information

that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape state-wide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization or private person as a tool to evaluate the range of alternatives in land and resource planning in the state. [1971 ex.s. c 234 § 16.]

79.68.900 Department's existing authority and powers preserved. Nothing in RCW 79.01.128, 79.44.003 and this chapter shall be construed to affect or repeal any existing authority or powers of the department of natural resources in the management or administration of the lands under its jurisdiction. [1971 ex.s. c 234 § 12.]

79.68.910 Existing withdrawals for state park and state game purposes preserved. Nothing in RCW 79.01.128, 79.44.003 and this chapter shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes. [1971 ex.s. c 234 § 15.]

Chapter 79.70

NATURAL AREA PRESERVES

Sections	
79.70.010	Purpose.
79.70.020	Definitions.

79.70.030	Powers of department.
79.70.040	Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves.
79.70.060	Legislative findings—Natural heritage resources.
79.70.070	Natural heritage advisory council.
79.70.080	Council duties.
79.70.090	Dedication of property as natural area.
79.70.900	Construction—1972 ex.s. c 119.

Conservation area account: RCW 79.71.110.

79.70.010 Purpose. The purpose of this chapter is to establish a state system of natural area preserves and a means whereby the preservation of these aquatic and land areas can be accomplished.

All areas within the state, except those which are expressly dedicated by law for preservation and protection in their natural condition, are subject to alteration by human activity. Natural lands, together with the plants and animals living thereon in natural ecological systems, are valuable for the purposes of scientific research, teaching, as habitats of rare and vanishing species, as places of natural historic and natural interest and scenic beauty, and as living museums of the original heritage of the state.

It is, therefore, the public policy of the state of Washington to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas. [1972 ex.s. c 119 § 1.]

79.70.020 Definitions. For the purposes of this chapter:

(1) "Department" shall mean the department of natural resources.

(2) "Natural areas" and "natural area preserves" shall mean such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important in preserving rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are acquired or voluntarily registered or dedicated by the owner under this chapter.

(3) "Public lands" and "state lands" shall have the meaning set out in RCW 79.01.004.

(4) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(5) "Commissioner" means the commissioner of public lands.

(6) "Instrument of dedication" means any written document intended to convey an interest in real property pursuant to chapter 64.04 RCW.

(7) "Natural heritage resources" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the natural heritage plan established under RCW 79.70.030.

(8) "Plan" means the natural heritage plan as established under RCW 79.70.030.

(9) "Program" means the natural heritage program as established under RCW 79.70.030.

(10) "Register" means the Washington register of natural area preserves as established under RCW 79.70.030. [1981 c 189 § 1; 1972 ex.s. c 119 § 2.]

79.70.030 Powers of department. In order to set aside, preserve and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish by rule and regulation the criteria for selection, acquisition, management, protection and use of such natural areas;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. The department of natural resources shall cooperate with the *department of game in the selection and nomination of areas from the data bank that relate to critical wildlife habitats. Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas which may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative

session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules and regulations as authorized by RCW 43.30.310 and 79.70.030(1) and chapter 34.04 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter. [1981 c 189 § 3; 1972 ex.s. c 119 § 3.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

79.70.040 Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves. The department is further authorized to purchase, lease, set aside or exchange any public land or state-owned trust lands which are deemed to be natural areas: *Provided*, That the appropriate state land trust receives the fair market value for any interests that are disposed of: *Provided, further*, That such transactions are approved by the board of natural resources.

An area consisting of public land or state-owned trust lands designated as a natural area preserve shall be held in trust and shall not be alienated except to another public use upon a finding by the department of natural resources of imperative and unavoidable public necessity. [1972 ex.s. c 119 § 4.]

79.70.060 Legislative findings—Natural heritage resources. The legislature finds:

(1) That it is necessary to establish a process and means for public and private sector cooperation in the development of a system of natural areas. Private and public landowners should be encouraged to participate in a program of natural area establishment which will benefit all citizens of the state;

(2) That there is a need for a systematic and accessible means for providing information concerning the locations of the state's natural heritage resources; and

(3) That the natural heritage advisory council should utilize a specific framework for natural heritage resource conservation decision making through a classification, inventory, priority establishment, acquisition, and management process known as the natural heritage program. Future natural areas should avoid unnecessary duplication of already protected natural heritage resources including those which may already be protected in existing publicly owned or privately dedicated lands such as nature preserves, natural areas, parks, or wilderness. [1981 c 189 § 2.]

79.70.070 Natural heritage advisory council. (1) The natural heritage advisory council is hereby established. The council shall consist of fifteen members, nine of whom shall be chosen as follows and who shall elect from the council's membership a chairperson:

(a) Five individuals, appointed by the commissioner, who shall be recognized experts in the ecology of natural areas and represent the public, academic, and private sectors. Desirable fields of expertise are biological and geological sciences; and

(b) Four individuals, appointed by the commissioner, who shall be selected from the various regions of the state. At least one member shall be or represent a private forest landowner and at least one member shall be or represent a private agricultural landowner.

(2) Members appointed under subsection (1) of this section shall serve for terms of four years.

(3) In addition to the members appointed by the commissioner, the *director of the department of game, the director of the department of ecology, the director of the department of fisheries, the supervisor of the department of natural resources, the director of the state parks and recreation commission, and the administrator of the interagency committee for outdoor recreation, or an authorized representative of each agency officer, shall serve as ex officio, nonvoting members of the council.

(4) Any vacancy on the council shall be filled by appointment for the unexpired term by the commissioner.

(5) In order to provide for staggered terms, of the initial members of the council:

(a) Three shall serve for a term of two years;

(b) Three shall serve for a term of three years; and

(c) Three shall serve for a term of four years.

(6) Members of the natural preserves advisory committee serving on July 26, 1981, shall serve as members of the council until the commissioner appoints a successor to each. The successor appointment shall be specifically designated to replace a member of the natural preserves advisory committee until all members of that committee have been replaced. A member of the natural preserves advisory committee is eligible for appointment to the council if otherwise qualified.

(7) Members of the council shall serve without compensation. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended. [1981 c 189 § 4.]

***Reviser's note:** References to the "director" and "department" of game mean "director" and "department" of wildlife. See note following RCW 77.04.020.

79.70.080 Council duties. (1) The council shall:

(a) Meet at least annually and more frequently at the request of the chairperson;

(b) Recommend policy for the natural heritage program through the review and approval of the natural heritage plan;

(c) Advise the department, the *department of game, the state parks and recreation commission, the department of fisheries, and other state agencies managing state-owned land or natural resources regarding areas under their respective jurisdictions which are appropriate for natural area registration or dedication;

(d) Advise the department of rules and regulations that the council considers necessary in carrying out this chapter; and

(e) Review and approve area nominations by the department or other agencies for registration and review and comment on legal documents for the voluntary dedication of such areas.

(2) From time to time, the council shall identify areas from the natural heritage data bank which qualify for registration. Priority shall be based on the natural heritage plan and shall generally be given to those resources which are rarest, most threatened, or under-represented in the heritage conservation system on a state-wide basis. After qualifying areas have been identified, the department shall advise the owners of such areas of the opportunities for acquisition or voluntary registration or dedication. [1981 c 189 § 5.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

79.70.090 Dedication of property as natural area. (1)

The owner of a registered natural area, whether a private individual or an organization, may voluntarily agree to dedicate the area as a natural area by executing with the state an instrument of dedication in a form approved by the council. The instrument of dedication shall be effective upon its recording in the real property records of the appropriate county or counties in which the natural area is located. The county assessor in computing assessed valuation shall take into consideration any reductions in property values and/or highest and best use which result from natural area dedication.

(2) A public agency owning or managing a registered natural area preserve may dedicate lands under the provisions of this chapter.

(3) The department shall adopt rules and regulations as authorized by RCW 43.30.310 and 79.70.030(1) relating to voluntary natural area dedication and defining:

(a) The types of real property interests that may be transferred;

(b) Real property transfer methods and the types of consideration of payment possible;

(c) Additional dedication provisions, such as natural area management, custody, use, and rights and privileges retained by the owner; and

(d) Procedures for terminating dedication arrangements. [1981 c 189 § 6.]

79.70.900 Construction—1972 ex.s. c 119. Nothing in this chapter is intended to supersede or otherwise affect any existing legislation. [1972 ex.s. c 119 § 6.]

Chapter 79.71

**WASHINGTON NATURAL RESOURCES
CONSERVATION AREAS**

Sections

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79.71.030	Definitions.
79.71.040	Acquisition of property for natural resources conservation areas—Designation.
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79.71.060	Public hearing on proposed conservation area.
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79.71.110	Conservation area account.
79.71.900	Severability—1987 c 472.

79.71.010 Legislative findings. The legislature finds: (1) That there is an increasing and continuing need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present and future generations; (2) that such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for dispersed low impact public recreation; (3) that in certain cases acquisition of property or rights in property is necessary to protect these areas for public purposes; and (4) that there is a need for an agency to act in an effective and timely manner to acquire interests in such areas and to develop appropriate management strategies for conservation purposes. [1987 c 472 § 1.]

79.71.020 Characteristics of lands considered for conservation purposes. Lands possessing the following characteristics are considered by the legislature to be worthy of consideration for conservation purposes:

(1) Lands identified as having high priority for conservation, natural systems, wildlife, and dispersed recreational values;

(2) Prime natural features of the Washington landscape or portions thereof, inland or coastal wetlands, significant littoral, estuarine, or aquatic sites, or important geological features;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses. [1987 c 472 § 2.]

79.71.030 Definitions. As used in this chapter:

"Department" means the department of natural resources.

"Conservation purposes" include but are not limited to: (1) Maintaining, enhancing, or restoring ecological systems, including but not limited to aquatic, coastal, riparian, montane, and geological systems, whether such systems be unique or typical to the state of Washington; (2) maintaining exceptional scenic landscapes; (3) maintaining habitat for threatened, endangered, and sensitive species; (4) enhancing sites for primitive recreational purposes; and (5) outdoor environmental education.

"Management for conservation purposes" may include limited production of income from forestry, agriculture, or other resource management activities, if such actions are consistent with the other purposes and requirements of this chapter.

"Washington natural resources conservation area" is an area of land and/or water which retains to some degree or has reestablished its natural character, although it need not be completely undisturbed, or has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington. [1987 c 472 § 3.]

79.71.040 Acquisition of property for natural resources conservation areas—Designation. The department is authorized to acquire property or less than fee interests in property, as defined by RCW 64.04.130, by all means, except eminent domain, for creating natural resources conservation areas, where acquisition is the best way to achieve the purposes of this chapter. Areas acquired or assembled by the department for conservation purposes will be designated as "Washington natural resources conservation areas." [1987 c 472 § 4.]

79.71.050 Transfer of trust land for conservation management areas—Use of proceeds. The department is authorized to transfer fee simple interest or less than fee interests in trust land, as defined by Article XVI of the Washington Constitution, for the creation of conservation management areas, providing there is full fair market value compensation for all rights transferred. The proceeds from such transfers shall be used for the exclusive purpose of acquiring real property to replace those interests utilized for the conservation area in order to meet the department's fiduciary obligations and to maintain the productive land base of the various trusts. [1987 c 472 § 5.]

79.71.060 Public hearing on proposed conservation area. The department shall hold a public hearing in the county where the majority of the land in the proposed conservation area is located. An area proposed for designation must contain resources consistent with the purposes of this chapter. [1987 c 472 § 6.]

79.71.070 Management plans for designated areas. The department shall develop a management plan for each designated area. The plan shall identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with

potential for primitive recreation and educational uses. The plan shall specify what types of management activities will be permitted, consistent with the conservation purposes of this chapter. The department shall make such plans available for review and comment by the public and other state, tribal, and local agencies. [1987 c 472 § 7.]

79.71.080 Administration of natural resources conservation areas—Management agreements and activities. The department is authorized to administer natural resource[s] conservation areas and may enter into management agreements for these areas with other state agencies, local governments, and private nonprofit conservancy corporations, as defined in RCW 64.04.130, when such agreements are consistent with the purposes of acquisition as defined in the adopted site management plan. All management activities within a Washington natural resources conservation area will conform with the plan. Any moneys derived from the management of these areas in conformance with the adopted plan shall be deposited in the stewardship account established in RCW 79.71.090. [1987 c 472 § 8.]

79.71.090 Natural resources conservation areas stewardship account. There is hereby created the natural resources conservation areas stewardship account in the state treasury to ensure proper and continuing management of land acquired or designated pursuant to this chapter. Funds for the stewardship account shall be derived from appropriations of state general funds, federal funds, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of conservation areas shall also be deposited in this stewardship account.

Appropriations from this account to the department shall be expended for no other purpose than to manage the areas approved by the legislature in fulfilling the purposes of this chapter. [1987 c 472 § 9.]

79.71.100 Designation of certain areas as natural resources conservation areas. The legislature hereby designates certain areas as natural resources conservation areas:

(1) The Mt. Si conservation area (King County), RCW 43.51.940, is hereby designated the Mt. Si natural resources conservation area. The department is directed to continue its management of this area and to develop a plan for its continued conservation and use by the public. In accordance with Article XVI of the Washington state Constitution, any available private lands and trust lands located within the designated boundaries of the Mt. Si conservation area shall be leased or acquired in fee from the appropriate trust at fair market value using funds appropriated for that purpose.

(2) Trust lands and state-owned land on Cypress Island (Skagit County) are hereby designated as the Cypress Island natural resources conservation area. Any available private lands necessary to achieve the purposes of this section shall be acquired by the department of

natural resources using funds appropriated for that purpose. Trust lands located within the designated boundaries of the Cypress Island natural resources conservation area shall be leased or acquired in fee from the appropriate trust at fair market value.

(3) Woodard Bay (Thurston County) is hereby designated the Woodard Bay natural resources conservation area. The department is directed to acquire property available in Sec. 18, T.19N, R1W using funds appropriated for that purpose.

(4) The area adjacent to the Dishman Hills natural area (Spokane County) is hereby designated the Dishman Hills natural resources conservation area. The department is directed to acquire property available in Sec. 19, 29 and 30, T.25N, R44E, using funds appropriated for that purpose. [1987 c 472 § 10.]

79.71.110 Conservation area account. The conservation area account is hereby established in the state treasury. The conservation area account shall consist of all moneys deposited under RCW 82.45.060(2) and any moneys which may be appropriated to it by law. Moneys in the account shall only be used for the acquisition of property or less than fee interest in property for the purposes of this chapter and chapter 79.70 RCW. [1987 c 472 § 11.]

79.71.900 Severability—1987 c 472. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 472 § 20.]

Chapter 79.72 SCENIC RIVER SYSTEM

Sections

79.72.010	Legislative finding—Purpose.
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79.72.030	Management policies—Development—Inclusion of management plans—Identification and exclusion of unsuitably developed lands—Boundaries of river areas—Hearings—Notice—Meetings—Chairman—Studies—Proposals for system additions.
79.72.040	Administration of management program—Powers, duties and authority of department.
79.72.050	State agencies and local governments to pursue policies to conserve and enhance included river areas—Shoreline management act—Private lands—Trust lands.
79.72.060	Criteria for inclusion of rivers within system.
79.72.070	Authority of departments of fisheries and game unaffected.
79.72.080	Rivers designated as part of system.
79.72.090	Inclusion of state's scenic rivers in national wild and scenic river system not precluded.
79.72.100	Game fund moneys not to be used.
79.72.900	Severability—1977 ex.s. c 161.

79.72.010 Legislative finding—Purpose. The legislature hereby finds that many rivers of this state, with their immediate environs, possess outstanding natural, scenic, historic, ecological, and recreational values of present and future benefit to the public. The legislature

further finds that the policy of permitting the construction of dams and other impoundment facilities at appropriate sections of the rivers of this state needs to be complemented by a policy that would protect and preserve the natural character of such rivers and fulfill other conservation purposes. It is hereby declared to be the policy of this state that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in as natural a condition as practical and that overuse of such rivers, which tends to downgrade their natural condition, shall be discouraged.

The purpose of this chapter is to establish a program for managing publicly owned land on rivers included in the state's scenic river system, to indicate the river segments to be initially included in that system, to prescribe a procedure for adding additional components to the system, and to protect the rights of private property owners. [1977 ex.s. c 161 § 1.]

79.72.020 Definitions—Committee of participating agencies. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state parks and recreation commission.

(2) "Committee of participating agencies" or "committee" means a committee composed of the executive head, or the executive's designee, of each of the state departments of ecology, fisheries, *game, natural resources, and transportation, the state parks and recreation commission, the interagency committee for outdoor recreation, the Washington state association of counties, and the association of Washington cities. In addition, the governor shall appoint two public members of the committee. Public members of the committee shall be compensated in accordance with RCW 43.03.220 and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and RCW 43.03.060.

When a specific river or river segment of the state's scenic river system is being considered by the committee, a representative of each participating local government associated with that river or river segment shall serve as a member of the committee.

(3) "Participating local government" means the legislative authority of any city or county, a portion of whose territorial jurisdiction is bounded by or includes a river or river segment of the state's scenic river system.

(4) "River" means a flowing body of water or a section, segment, or portion thereof.

(5) "River area" means a river and the land area in its immediate environs as established by the participating agencies not exceeding a width of one-quarter mile landward from the streamway on either side of the river.

(6) "Scenic easement" means the negotiated right to control the use of land, including the air space above the land, for the purpose of protecting the scenic view throughout the visual corridor.

(7) "Streamway" means that stream-dependent corridor of single or multiple, wet or dry, channel or channels within which the usual seasonal or stormwater run-off

peaks are contained, and within which environment the flora, fauna, soil, and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(8) "System" means all the rivers and river areas in the state designated by the legislature for inclusion as scenic rivers but does not include tributaries of a designated river unless specifically included by the legislature. The inclusion of a river in the system does not mean that other rivers or tributaries in a drainage basin shall be required to be part of the management program developed for the system unless the rivers and tributaries within the drainage basin are specifically designated for inclusion by the legislature.

(9) "Visual corridor" means that area which can be seen in a normal summer month by a person of normal vision walking either bank of a river included in the system. The visual corridor shall not exceed the river area. [1987 c 57 § 1; 1984 c 7 § 371; 1977 ex.s. c 161 § 2.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Severability—1984 c 7: See note following RCW 47.01.141.

79.72.030 Management policies—Development—Inclusion of management plans—Identification and exclusion of unsuitably developed lands—Boundaries of river areas—Hearings—Notice—Meetings—Chairman—Studies—Proposals for system additions. (1) The department shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The department may adopt regulations identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be subject to review by the committee of participating agencies. Once such a policy has been approved by a majority vote of the committee members, it shall be adopted by the department in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the committee of participating agencies by majority vote, and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The committee of participating agencies shall, by two-thirds majority vote, identify on a river by river basis any publicly owned or leased lands which could be

included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The department shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The committee of participating agencies, by majority vote, shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW 79.72.080, the committee shall make such determination, and those determinations authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the committee shall hold hearings in accord with chapter 34.04 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The department shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

(6) Meetings of the committee shall be called by the department or by written petition signed by five or more of the committee members. The chairman of the parks and recreation commission or the chairman's designee shall serve as the chairman of any meetings of the committee held to implement the provisions of this chapter.

The committee shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may, through the department, submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the committee's judgment, make an area a worthy addition to the system. [1977 ex.s. c 161 § 3.]

79.72.040 Administration of management program—Powers, duties and authority of department.

(1) The management program for the system shall be administered by the department. The department shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules and regulations, in accord with chapter 34.04 RCW, for each portion of the system, which shall implement the management policies. In developing rules and regulations for a specific river in the system, the department shall hold at least one public hearing in the general locale of the river under consideration. The department shall cause a brief summary of the proposed rules and regulations to be published twice in a newspaper of general circulation in the area which includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the department

shall also provide notice of the hearings, rules, regulations, and decisions of the department to radio and television stations and major local newspapers in the areas which include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the department is authorized, subject to approval by majority vote of the members of the committee, to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas, boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The department is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The department is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules and regulations adopted under this section or agreements made under the provisions of this chapter. [1977 ex.s. c 161 § 4.]

79.72.050 State agencies and local governments to pursue policies to conserve and enhance included river areas—Shoreline management act—Private lands—Trust lands. (1) All state government agencies and local governments are hereby directed to pursue policies with regard to their respective activities, functions, powers, and duties which are designed to conserve and enhance the conditions of rivers which have been included in the system, in accordance with the management policies and the rules and regulations adopted by the department for such rivers. Local agencies are directed to pursue such policies with respect to all lands in the river area owned or leased by such local agencies. Nothing in this chapter shall authorize the modification of a shoreline management plan adopted by a local government and approved by the state pursuant to chapter 90.58 RCW without the approval of the department of ecology and local government. The policies adopted pursuant to this chapter shall be integrated, as fully as possible, with those of the shoreline management act of 1971.

(2) Nothing in this chapter shall grant to the committee of participating agencies or the department the power to restrict the use of private land without either the specific written consent of the owner thereof or the acquisition of rights in real property authorized by RCW 79.72.040.

(3) Nothing in this chapter shall prohibit the department of natural resources from exercising its full responsibilities and obligations for the management of state trust lands. [1977 ex.s. c 161 § 5.]

79.72.060 Criteria for inclusion of rivers within system. Rivers of a scenic nature are eligible for inclusion in the system. Ideally, a scenic river:

(1) Is free-flowing without diversions that hinder recreational use;

(2) Has a streamway that is relatively unmodified by riprapping and other stream bank protection;

(3) Has water of sufficient quality and quantity to be deemed worthy of protection;

(4) Has a relatively natural setting and adequate open space;

(5) Requires some coordinated plan of management in order to enhance and preserve the river area; and

(6) Has some lands along its length already in public ownership, or the possibility for purchase or dedication of public access and/or scenic easements. [1977 ex.s. c 161 § 6.]

79.72.070 Authority of departments of fisheries and game unaffected. Nothing contained in this chapter shall affect the authority of the department of fisheries and the *department of game to construct facilities or make improvements to facilitate the passage or propagation of fish nor shall anything in this chapter be construed to interfere with the powers, duties, and authority of the department of fisheries or the *department of game to regulate, manage, conserve, and provide for the harvest of fish or wildlife within any area designated as being in the state's scenic river system: *Provided*, That no hunting shall be permitted in any state park. [1977 ex.s. c 161 § 7.]

**Reviser's note:* References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

79.72.080 Rivers designated as part of system. The following rivers of the state of Washington are hereby designated as being in the scenic river system of the state of Washington:

(1) The Skykomish river from the junction of the north and south forks of the Skykomish river:

(a) Downstream approximately fourteen miles to its junction with the Sultan river;

(b) Upstream approximately twenty miles on the south fork to the junction of the Tye and Foss rivers;

(c) Upstream approximately eleven miles on the north fork to its junction with Bear creek;

(2) The Beckler river from its junction with the south fork of the Skykomish river upstream approximately eight miles to its junction with Rapid river; and

(3) The Tye river from its junction with the south fork of the Skykomish river upstream approximately fourteen miles to Tye Lake. [1977 ex.s. c 161 § 8.]

Green river gorge conservation area: RCW 43.51.900 through 43.51.930.

Washington state Yakima river conservation area: RCW 43.51.946 through 43.51.956.

79.72.090 Inclusion of state's scenic rivers in national wild and scenic river system not precluded. Nothing in this chapter shall preclude a section or segment of the state's scenic rivers included in the system from becoming a part of the national wild and scenic river system. [1977 ex.s. c 161 § 9.]

79.72.100 Game fund moneys not to be used. No funds shall be expended from the *game fund to carry out the provisions of this chapter. [1977 ex.s. c 161 § 10.]

*Reviser's note: References to the "game fund" mean the "wildlife fund." See note following RCW 77.04.020.

79.72.900 Severability—1977 ex.s. c 161. If any provision of this act, or its application to any person of legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1977 ex.s. c 161 § 12.]

Chapter 79.76 GEOTHERMAL RESOURCES

Sections

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79.76.010 Legislative declaration. The public has a direct interest in the safe, orderly and nearly pollution-

free development of the geothermal resources of the state, as hereinafter in RCW 79.76.030(1) defined. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for the orderly exploration, safe drilling, production and proper abandonment of geothermal resources in the state of Washington. [1974 ex.s. c 43 § 1.]

79.76.020 Short title. This chapter shall be known as the Geothermal Resources Act. [1974 ex.s. c 43 § 2.]

79.76.030 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

(2) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(3) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(4) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of

a fluid from reinjection wells to geothermal wells: *Provided*, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(5) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(6) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(7) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(8) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(9) "Department" means the department of natural resources.

(10) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground.

(11) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(12) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(13) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(14) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period. [1974 ex.s. c 43 § 3.]

79.76.040 Geothermal resources deemed sui generis. Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are hereby declared to be the private property of the holder of the title to the surface land above the resource. [1979 ex.s. c 2 § 1; 1974 ex.s. c 43 § 4.]

Severability—1979 ex.s. c 2: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 2 § 2.]

79.76.050 Administration of chapter. (1) The department shall administer and enforce the provisions of this chapter and the rules, regulations, and orders relating to the drilling, operation, maintenance, abandonment and restoration of geothermal areas, to prevent damage to and waste from underground geothermal deposits, and to prevent damage to underground and surface waters, land or air that may result from improper drilling, operation, maintenance or abandonment of geothermal resource wells.

(2) In order to implement the terms and provisions of this chapter, the department under the provisions of chapter 34.04 RCW, as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter, including but not restricted to defining geothermal areas; establishing security requirements, which may include bonding; providing for liens against production; providing for casing and safety device requirements; providing for site restoration plans to be completed prior to abandonment; and providing for abandonment requirements. [1974 ex.s. c 43 § 5.]

79.76.060 Scope of chapter. This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, byproducts and/or waste products which have escaped or been released from the energy transfer system and/or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law (Title 75 RCW), and the state game laws (Title 77 RCW), and any other state environmental pollution control laws. Authorization for use of byproduct water resources for all beneficial uses, including but not limited to greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW. [1974 ex.s. c 43 § 6.]

79.76.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application,

which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each geothermal area according to subsection (1) of this section, except that no permit fee shall be required, no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 79.76.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [1974 ex.s. c 43 § 7.]

79.76.080 Drilling permits—Criteria for granting. A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease ground water available for prior water rights in any aquifer or other ground water source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

The department shall forward a copy of the permit to the department of ecology within five days of issuance. [1974 ex.s. c 43 § 8.]

79.76.090 Casing requirements. Any operator engaged in drilling or operating a well for geothermal resources shall equip such well with casing of sufficient strength and with such safety devices as may be necessary, in accordance with methods approved by the department.

No person shall remove a casing, or any portion thereof, from any well without prior approval of the department. [1974 ex.s. c 43 § 9.]

79.76.100 Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology. Any well drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and regulations relating to wells drilled for appropriation and use of ground waters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [1974 ex.s. c 43 § 10.]

79.76.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment. (1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof shall be mailed by registered mail both to such operator at his last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his surety. [1974 ex.s. c 43 § 11.]

79.76.120 Notification of abandonment or suspension of operations—Required—Procedure. (1) Before any operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification

in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of RCW 79.76.270. [1974 ex.s. c 43 § 12.]

79.76.130 Performance bond or other security—Required. Every operator who engages in the drilling, redrilling, or deepening of any well shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and regulations and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its discretion, may accept a single surety or security arrangement covering more than one well. [1974 ex.s. c 43 § 13.]

79.76.140 Termination or cancellation of bond or change in other security, when. The department shall not consent to the termination and cancellation of any bond by the operator, or change as to other security given, until the well or wells for which it has been issued have been properly abandoned or another valid bond for such well has been submitted and approved by the department. A well is properly abandoned when abandonment has been approved by the department. [1974 ex.s. c 43 § 14.]

79.76.150 Notification of sale, exchange, etc. The owner or operator of a well shall notify the department in writing within ten days of any sale, assignment, conveyance, exchange, or transfer of any nature which results in any change or addition in the owner or operator of the well on such forms with such information as may be prescribed by the department. [1974 ex.s. c 43 § 15.]

79.76.160 Combining orders, unitization programs and well spacing—Authority of department. The department has the authority, through rules and regulations, to promulgate combining orders, unitization programs, and well spacing, and establish proportionate costs among owners or operators for the operation of such units as the result of said combining orders, if good and sufficient reason is demonstrated that such measures are necessary to prevent the waste of geothermal resources. [1974 ex.s. c 43 § 16.]

79.76.170 Designation of resident agent for service of process. Each owner or operator of a well shall designate a person who resides in this state as his agent upon whom may be served all legal processes, orders, notices,

and directives of the department or any court. [1974 ex.s. c 43 § 17.]

79.76.180 General authority of department. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations, cooperate with other governmental and private agencies in making investigations, receive any federal funds, state funds, and other funds and expend them on research programs concerning geothermal resources and their potential development within the state, and to collect and disseminate information relating to geothermal resources in the state: *Provided*, That the department shall not construct or operate commercial geothermal facilities. [1974 ex.s. c 43 § 18.]

79.76.190 Employment of personnel. The department shall have the authority, and it shall be its duty, to employ all personnel necessary to carry out the provisions of this chapter pursuant to chapter 41.06 RCW. [1974 ex.s. c 43 § 19.]

79.76.200 Drilling records, etc., to be maintained—Inspection—Filing. (1) The owner or operator of any well shall keep or cause to be kept careful and accurate logs, records, descriptions, and histories of the drilling, redrilling, or deepening of the well.

(2) All logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department a copy of the logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drilling or operation underway or suspended. [1974 ex.s. c 43 § 20.]

79.76.210 Filing of records with department upon completion, abandonment or suspension of operations. Upon completion or plugging and abandonment of any well or upon the suspension of operations conducted with respect to any well for a period of at least six months, one copy of the log, core record, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [1974 ex.s. c 43 § 21.]

79.76.220 Statement of geothermal resources produced—Filing. The owner or operator of any well producing geothermal resources shall file with the department a statement of the geothermal resources produced. Such report shall be submitted on such forms and in such manner as may be prescribed by the department. [1974 ex.s. c 43 § 22.]

79.76.230 Confidentiality of records. (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the

department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based. [1974 ex.s. c 43 § 23.]

79.76.240 Removal, destruction, alteration, etc., of records prohibited. No person shall, for the purpose of evading the provision of this chapter or any rule, regulation or order of the department made thereunder, remove from this state, or destroy, mutilate, alter or falsify any such record, account, or writing. [1974 ex.s. c 43 § 24.]

79.76.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal. Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter, the department shall issue a written order in person to the operator or his employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in RCW 79.76.280. When the department deems necessary the order may include a shutdown order to remain in effect until the deficiency is corrected. [1974 ex.s. c 43 § 25.]

79.76.260 Liability in damages for violations—Procedure. Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department made pursuant to the provisions of this chapter, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, shall be liable to pay the state damages including an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake, other

water source, or land to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: *Provided*, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damage occurred. Any moneys so recovered by the attorney general shall be transferred to the department under whose jurisdiction the damaged resource occurs, for the purposes of restoring the resource. [1974 ex.s. c 43 § 26.]

79.76.270 Injunctions—Restraining orders. Whenever it shall appear that any person is violating any provision of this chapter, or any rule, regulation, or order made by the department hereunder, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may, without bond, obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1974 ex.s. c 43 § 27.]

79.76.280 Judicial review. (1) Any person adversely affected by any rule, regulation, order, or permit entered by the department pursuant to this chapter may obtain judicial review thereof in accordance with the applicable provisions of chapter 34.04 RCW.

(2) The court having jurisdiction, insofar as is practicable, shall give precedence to proceedings for judicial review brought under this chapter. [1974 ex.s. c 43 § 28.]

79.76.290 Violations—Penalty. Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [1974 ex.s. c 43 § 29.]

79.76.300 Aiding or abetting violations. No person shall knowingly aid or abet any other person in the violation of any provision of this chapter or of any rule, regulation or order of the department made hereunder. [1974 ex.s. c 43 § 30.]

79.76.900 Severability—1974 ex.s. c 43. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 43 § 32.]

Chapter 79.90

AQUATIC LANDS—IN GENERAL

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79.90.010 "Aquatic lands". Whenever used in chapters 79.90 through 79.96 RCW the term "aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters. [1982 1st ex.s. c 21 § 1.]

79.90.015 "Outer harbor line". Whenever used in chapters 79.90 through 79.96 RCW the term "outer harbor line" means a line located and established in navigable waters as provided in section 1 of Article XV of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons. [1982 1st ex.s. c 21 § 2.]

79.90.020 "Harbor area". Whenever used in chapters 79.90 through 79.96 RCW the term "harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce. [1982 1st ex.s. c 21 § 3.]

79.90.025 "Inner harbor line". Whenever used in chapters 79.90 through 79.96 RCW the term "inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide

or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area. [1982 1st ex.s. c 21 § 4.]

79.90.030 "First class tidelands". Whenever used in chapters 79.90 through 79.96 RCW the term "first class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide. [1982 1st ex.s. c 21 § 5.]

79.90.035 "Second class tidelands". Whenever used in chapters 79.90 through 79.96 RCW the term "second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide. [1982 1st ex.s. c 21 § 6.]

79.90.040 "First class shorelands". Whenever used in chapters 79.90 through 79.96 RCW the term "first class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles thereof upon either side. [1982 1st ex.s. c 21 § 7.]

79.90.045 "Second class shorelands". Whenever used in chapters 79.90 through 79.96 RCW the term "second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city. [1982 1st ex.s. c 21 § 8.]

79.90.050 "Beds of navigable waters". Whenever used in chapters 79.90 through 79.96 RCW, the term "beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created. [1982 1st ex.s. c 21 § 9.]

79.90.055 "Improvements". Whenever used in chapters 79.90 through 79.96 RCW the term "improvements" when referring to aquatic lands means anything considered a fixture in law placed within, upon or attached to such lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land. [1982 1st ex.s. c 21 § 10.]

79.90.060 "Valuable materials". Whenever used in chapters 79.90 through 79.96 RCW the term "valuable materials" when referring to aquatic lands means any

product or material within or upon said lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapters 79.01 and 79.14 RCW. [1982 1st ex.s. c 21 § 11.]

79.90.065 "Person". Whenever used in chapters 79.90 through 79.96 RCW the term "person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any public or municipal corporation, or any unit of government, however designated. [1982 1st ex.s. c 21 § 12.]

79.90.070 Harbor line commission. The board of natural resources shall constitute the commission provided for in section 1 of Article XV of the state Constitution to locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [1982 1st ex.s. c 21 § 13.]

79.90.080 Board of natural resources—Records—Rules and regulations. The board of natural resources acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the determination of harbor areas. The board shall have the power from time to time to make and enforce rules and regulations for the carrying out of the provisions of chapters 79.90 through 79.96 RCW relating to its duties not inconsistent with law. [1982 1st ex.s. c 21 § 14.]

79.90.090 Sale and lease of state-owned aquatic lands—Blank forms of applications. The department of natural resources shall prepare, and furnish to applicants, blank forms of applications for the purchase of tide or shore lands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, and the purchase of valuable material situated thereon, and the lease of tidelands, shorelands and harbor areas belonging to the state, which forms shall contain such instructions as will inform and aid the applicants. [1982 1st ex.s. c 21 § 15.]

79.90.100 Who may purchase or lease—Application—Fees. Any person desiring to purchase any tide or shore lands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or to purchase any valuable material situated thereon, or to lease any aquatic lands, shall file with the department of natural resources an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board of natural resources in its rules and regulations, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities

permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account (RMCA) fund in the general fund. [1982 1st ex.s. c 21 § 16.]

79.90.105 Private recreational docks. The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights. This permission is subject to applicable local regulation governing construction, size, and length of the dock. This permission may be revoked by the department upon finding of public necessity which is limited to the protection of waterward access or ingress rights of other landowners or public health and safety. The revocation may be appealed as a contested case under chapter 34-.04 RCW. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law. [1983 2nd ex.s. c 2 § 2.]

79.90.110 Date of sale limited by time of appraisal. In no case shall any tide or shore lands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or any valuable materials situated within or upon any tidelands, shorelands or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale. [1982 1st ex.s. c 21 § 17.]

79.90.120 Survey to determine areas subject to sale or lease. The department of natural resources may cause any aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [1982 1st ex.s. c 21 § 18.]

79.90.130 Valuable materials sold separately—Valuable materials from Columbia river—Agreements with Oregon. Valuable materials situated within or upon tidelands, shorelands, or the beds of navigable waters belonging to the state may be sold separately from the land, when in the judgment of the department of natural resources, it is in the best interests of the state to sell the same. When application is made for the purchase of any valuable material, situated within or upon aquatic lands, the department shall inspect and appraise the value of the material applied for: *Provided*, That no valuable material shall be sold for less than the appraised value thereof: *Provided further*, That the department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel or other valuable materials taken from the bed of the Columbia river where said river forms the boundary line between said states. [1982 1st ex.s. c 21 § 19.]

79.90.140 Road material—Sale to public authorities—Dispositions of proceeds. Any county, city, or town desiring to purchase any stone, rock, gravel, or sand upon any aquatic lands to be used in the construction, maintenance, or repair of any public street, road, or highway within such county, city, or town, may file with the department of natural resources an application for the purchase thereof, which application shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name or other designation and location of the street, road, or highway upon which the material is to be used. The department upon the receipt of such an application is authorized to sell said material in such manner and upon such terms as deemed advisable and in the best interests of the state, but for not less than the fair market value thereof to be appraised by the department. The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale would belong. [1982 1st ex.s. c 21 § 20.]

79.90.150 Material removed for channel or harbor improvement or flood control—Use for public purpose. When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: *Provided*, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: *Provided*, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. Nothing in this section shall repeal or modify the provisions of RCW 75.20.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law. [1982 1st ex.s. c 21 § 21.]

79.90.160 Dredge spoils—Sale by certain landowners. The legislature finds and declares that, due to the extraordinary volume of material washed down onto state-owned beds and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent privately owned property in such areas, if further disposed, will be of

nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Cowlitz river and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent private lands during the years 1980 through December 31, 1990, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of such lands without the necessity of any charge by the department of natural resources and free and clear of any interest of the department of natural resources of the state of Washington. [1985 c 307 § 7; 1985 c 12 § 1; 1982 1st ex.s. c 21 § 22.]

79.90.170 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when. When the department of natural resources shall have decided to sell any tidelands or shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or any valuable materials situated within or upon any aquatic lands, it shall be the duty of the department to forthwith fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in said notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold (or the valuable materials thereon) is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office and the area headquarters administering such sale, and in the office of the county auditor of such county; which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in the case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the area headquarters and the department's Olympia office: *Provided*, That any sale of valuable material of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at the appraised value without notice or advertising. [1982 1st ex.s. c 21 § 23.]

79.90.180 Sale procedure—Pamphlet list of lands or materials—Notice of sale—Proof of publishing and posting. The department of natural resources shall cause to be printed a list of all tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or valuable materials contained within or upon aquatic lands, and the appraised value thereof, that are to be sold in the several counties of the state, said lists to be issued at least four weeks prior to the date of any sale of the lands and materials enumerated thereon, such materials to be listed under the name

of the county wherein located, in alphabetical order giving the appraised values, the character of the same and such other information as may be of interest to prospective buyers. Said department shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively as reported by such auditors. And said county auditors shall keep the list so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and, when requested so to do, shall mail copies of such lists to residents of their counties. The department shall retain for free distribution in its office in Olympia and the area offices sufficient copies of said lists, to be kept in a conspicuous place or receptacle on the counter of the general office of the department of natural resources, and the areas, and, when requested so do to, shall mail copies of said list as issued to any applicant therefor. Proof of publication of the notice of sale shall be made by affidavit of the publisher, or person in charge, of the newspaper publishing the same and proof of posting the notice of sale and the receipt of the lists shall be made by certificate of the county auditor which shall forthwith be sent to and filed with the department of natural resources. [1982 1st ex.s. c 21 § 24.]

79.90.190 Sale procedure—Additional advertising expense. The department of natural resources is authorized to expend any sum in additional advertising of such sale as shall be determined to be in the best interests of the state. [1982 1st ex.s. c 21 § 25.]

79.90.200 Sale procedure—Place of sale—Hours—Reoffer—Continuance. When sales are made by the county auditor, they shall take place at such place on county property as the county legislative authority may direct in the county in which the whole, or the greater part, of each lot, block, or tract of land, or the material thereon, to be sold, is situated. All other sales shall be held at the departmental area offices having jurisdiction over the respective sales. All sales shall be conducted between the hours of ten o'clock a.m. and four o'clock p.m.

Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.90.170, 79.90.180, and 79.90.190. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [1982 1st ex.s. c 21 § 26.]

79.90.210 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction—Direct sale to applicant without notice, when. All sales of tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest bidder, on the terms prescribed by law and as specified in the notice

provided, and no land or materials shall be sold for less than their appraised value: *Provided*, That when valuable material has been appraised at an amount not exceeding twenty thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold: *Provided further*, That any sale of valuable material on aquatic lands of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [1982 1st ex.s. c 21 § 27.]

79.90.220 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase. Sales by public auction under this chapter shall be conducted under the direction of the department of natural resources, by its authorized representative or by the county auditor of the county in which the sale is held. The department's representative and the county auditor are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. Said deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of his proceedings with reference to such sales as may be required by the department. [1982 1st ex.s. c 21 § 28.]

79.90.230 Sale procedure—Readvertisement of lands not sold. If any tide or shore land, when otherwise permitted under RCW 79.94.150 to be sold, so offered for sale be not sold, the same may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department of natural resources it shall be expedient so to do, and such land shall be again advertised and offered for sale as herein provided, whenever any person shall apply to the commissioner in writing to have such land offered for sale and shall agree to pay, at least the appraised value thereof and shall deposit with the department at the time of making such application a sufficient sum of money to pay the cost of advertising such sale. [1982 1st ex.s. c 21 § 29.]

79.90.240 Sale procedure—Confirmation of sale. If no affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, shall be filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale of any tidelands or shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or valuable materials located within or upon any aquatic lands, and it shall appear from such report that the sale was fairly conducted, that the purchaser was the highest bidder at such sale, and that his bid was not less than the appraised value of the property sold. If the commissioner shall be satisfied that the lands, or material, sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price at which it shall have been sold, and the payment required by law to be made at the time of making the sale, has been made, and that the best interests of the state may be subserved thereby, the commissioner shall enter upon his records a confirmation of sale and thereupon issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [1982 1st ex.s. c 21 § 30.]

79.90.250 Sale procedure—Terms of payment—Deferred payments, rate of interest. All tidelands and shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board of natural resources, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of said sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and thereafter all interest shall become due and payable annually on said date, and all remittances for payment of either principal or interest shall be forwarded to the department of natural resources. [1982 1st ex.s. c 21 § 31.]

79.90.260 Sale procedure—Certificate to governor of payment in full—Deed. When the entire purchase price of any tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall have been fully paid, the department of natural resources shall certify such fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the office of the commissioner of public lands, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter. [1982 1st ex.s. c 21 § 32.]

79.90.270 Sale procedure—Reservation in contract. Each and every contract for the sale of (and each deed to) tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall contain the reservation contained in RCW 79.01.224. [1982 1st ex.s. c 21 § 33.]

79.90.280 Sale procedure—Form of contract—Forfeiture—Extension of time. The purchaser of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner of public lands on behalf of the state, with his seal of office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW 79.01.228. [1982 1st ex.s. c 21 § 34.]

79.90.290 Bill of sale for valuable material sold separately. When valuable materials shall have been sold separate from aquatic lands and the purchase price is paid in full, the department of natural resources shall cause a bill of sale, signed by the commissioner of public lands and attested by the seal of his office, setting forth the time within which such material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the office of the commissioner of public lands, upon the payment of the fee provided for in this chapter. [1982 1st ex.s. c 21 § 35.]

79.90.300 Sale of rock, gravel, sand and silt. The department of natural resources, upon application by any person, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand and silt located within or upon beds of navigable waters, or upon any tidelands or shorelands belonging to the state and providing for payment to be made therefor by such royalty as the department may fix. [1982 1st ex.s. c 21 § 36.]

79.90.310 Sale of rock, gravel, sand and silt—Application—Terms of lease or contract—Bond—Payment—Reports. Each application made pursuant to RCW 79.90.300 shall set forth the estimated quantity and kind of materials desired to be removed

and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The department of natural resources may in its discretion include in any lease or contract entered into pursuant to RCW 79.90.300 through 79.90.320, such terms and conditions deemed necessary by the department to protect the interests of the state. In each such lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of such contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the lease or contract. [1982 1st ex.s. c 21 § 37.]

79.90.320 Sale of rock, gravel, sand and silt—Investigation, audit of books of person removing. The department of natural resources may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such lease or contract under RCW 79.90.300 and 79.90.310 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [1982 1st ex.s. c 21 § 38.]

79.90.330 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands. The department of natural resources may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any aquatic lands belonging to the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.01.616 through 79.01.651, inclusive, shall apply thereto. [1987 c 20 § 16; 1982 1st ex.s. c 21 § 39.]

79.90.340 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands. The department of natural resources is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any aquatic lands owned by the state or from which it may hereafter acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.01.652 through 79.01.696, inclusive, shall apply thereto. [1982 1st ex.s. c 21 § 40.]

79.90.350 Subdivision of leases—Fee. Whenever the holder of any contract to purchase any tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or the holder of any lease of any such lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the same to the department of natural resources with the request to have it divided into two or more contracts or leases, the department may divide the same and issue new contracts, or leases: *Provided*, That no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as determined by the board of natural resources for each new contract or lease issued, shall be paid by the applicant and such fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020. [1982 1st ex.s. c 21 § 41.]

79.90.360 Effect of mistake or fraud. Any sale or lease of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase, or lease, issued thereon shall be of no effect, and the holder of such contract, or lease, shall be required to surrender the same to the department of natural resources, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of such surrendered contract, or lease, to be refunded to the holder thereof, provided the same has not been paid into the state treasury. [1982 1st ex.s. c 21 § 42.]

79.90.370 Assignment of contracts or leases. All contracts of purchase of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, and all leases of tidelands, shorelands, or beds of navigable waters belonging to the state issued by the department of natural resources shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser, or lessee, of whom he is the assignee, and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, but only if the assignment is first approved by the department and entered upon the records in the office of the commissioner of public lands. [1982 1st ex.s. c 21 § 43.]

79.90.380 Abstracts of state-owned aquatic lands. The department of natural resources shall cause full and correct abstracts of all aquatic lands, to be made and kept in the same manner as provided for in RCW 79.01.304. [1982 1st ex.s. c 21 § 44.]

79.90.390 Distraint or sale of improvements for taxes. Whenever improvements have been made on state-owned tidelands, shorelands or beds of navigable

waters, in front of cities or towns, prior to the location of harbor lines in front of such cities or towns, and the reserved harbor area as located include such improvements, no distraint or sale of such improvements for taxes shall be had until six months after said lands have been leased or offered for lease: *Provided*, That this section shall not affect or impair the lien for taxes on said improvements. [1982 1st ex.s. c 21 § 45.]

79.90.400 Aquatic lands—Court review of actions. Any applicant to purchase, or lease, any aquatic lands of the state, or any valuable materials thereon, and any person whose property rights or interest will be affected by such sale or lease, feeling himself aggrieved by any order or decision of the board of natural resources, or the commissioner of public lands, concerning the same, may appeal therefrom in the manner provided in RCW 79.01.500. [1982 1st ex.s. c 21 § 46.]

79.90.410 Reconsideration of official acts. The department of natural resources may review and reconsider any of its official acts relating to the aquatic lands of the state until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [1982 1st ex.s. c 21 § 47.]

79.90.450 Aquatic lands—Findings. The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department of natural resources the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. The purpose of RCW 79.90.450 through 79.90.545 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands. [1984 c 221 § 1.]

79.90.455 Aquatic lands—Management guidelines. The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;

- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [1984 c 221 § 2.]

79.90.460 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority. (1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to state-wide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department of natural resources, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.90 through 79.96 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap. [1984 c 221 § 3.]

79.90.465 Definitions. The definitions in this section apply throughout chapters 79.90 through 79.96 RCW.

(1) "Water-dependent use" means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(2) "Water-oriented use" means a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall

be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

(3) "Nonwater-dependent use" means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(4) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(5) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(6) "Department" means the department of natural resources.

(7) "Port district" means a port district created under Title 53 RCW.

(8) The "real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(9) The "inflation rate" for a given year is the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(10) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(11) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers.

(12) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under RCW 79.90.475 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or

withdrawn for the use of, state agencies other than the department of natural resources. [1984 c 221 § 4.]

79.90.470 Aquatic lands—Use for public utility lines—Use for public parks or public recreation purposes—Lease of tidelands in front of public parks. The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted without charge by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90-.450 through 79.90.460 and does not obstruct navigation or other public uses. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission. [1984 c 221 § 5.]

79.90.475 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement. Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. Such agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage such aquatic lands if: (1) The port district acquires the leasehold interest in accordance with state law, or (2) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW and the implementing regulations adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

No rent shall be due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use such lands, the rental fee attributable to such aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department: *Provided*, That a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by

the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for non-water-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent shall be due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board of natural resources. [1984 c 221 § 6.]

79.90.480 Determination of annual rent rates for lease of aquatic lands for water-dependent uses. Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1 thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under subsection (3)(a) of this section.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic

land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 in those cases in which the state owns the fill and has a right to charge for the fill. [1984 c 221 § 7.]

79.90.485 Log storage rents. (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.90.480, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board of natural resources. [1984 c 221 § 8.]

79.90.490 Rent for leases in effect October 1, 1984. For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.90.480 or 79.90.485 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485. If the first rent amount established under RCW 79.90.480 or 79.90.485 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.90.480 or 79.90.485 shall not increase more than fifty percent in any year.

This section applies only to leases of state-owned aquatic lands subject to RCW 79.90.480 or 79.90.485. [1984 c 221 § 9.]

79.90.495 Rents and fees for aquatic lands used for aquaculture production and harvesting. If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation. [1984 c 221 § 10.]

79.90.500 Aquatic lands—Rents for nonwater-dependent uses—Rents and fees for the recovery of mineral or geothermal resources. Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute. [1984 c 221 § 11.]

79.90.505 Aquatic lands—Rents for multiple uses. If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for such use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for such parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [1984 c 221 § 12.]

79.90.510 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use. If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13.]

79.90.515 Aquatic lands—Rent for improvements. Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

If improvements were installed under a good faith belief that a state aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [1984 c 221 § 14.]

79.90.520 Aquatic lands—Administrative review of proposed rent. The manager shall, by rule, provide for an

administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under RCW 79.90.475, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be the average rate of return for the prior calendar year on conventional real property mortgages as reported by the federal home loan bank board. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies including those under chapter 34.04 RCW. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [1984 c 221 § 15.]

79.90.525 Aquatic lands—Security for leases for more than one year. For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16.]

79.90.530 Aquatic lands—Payment of rent. If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17.]

79.90.535 Aquatic lands—Interest on overdue sums. The lessee shall pay interest at the rate of one percent per month on rent or other sums owing to the department commencing thirty days after the date each rent or other sum is due and payable, unless there is review pending under RCW 79.90.520. [1984 c 221 § 18.]

79.90.540 Adoption of rules. The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.90.450 through 79.90.535, specifically including criteria for determining under RCW 79.90.480(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [1984 c 221 § 19.]

79.90.545 Application to existing property rights—Application of Shoreline Management Act. Nothing in this chapter or RCW 79.93.040 or 79.93.060

shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW. [1984 c 221 § 20.]

79.90.550 Aquatic land disposal sites—Legislative findings. The legislature finds that the department of natural resources provides, manages, and monitors aquatic land disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound water quality authority. These disposal sites are essential to the commerce and well being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [1987 c 259 § 1.]

Effective date—1987 c 259: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

79.90.555 Aquatic land dredged material disposal site account. The aquatic land dredged material disposal site account is hereby established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department of natural resources from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. Notwithstanding RCW 43.84.090, all earnings of investments of balances in the account shall be credited to the account. [1987 c 259 § 2.]

Effective date—1987 c 259: See note following RCW 79.90.550.

79.90.560 Fees for use of aquatic land dredged material disposal sites authorized. The department of natural resources shall, from time to time, estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of such sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.90.555. [1987 c 259 § 3.]

Effective date—1987 c 259: See note following RCW 79.90.550.

79.90.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96-.901 through 79.96.905.

79.90.901 Severability—1984 c 221. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 221 § 31.]

79.90.902 Effective date—1984 c 221. This act shall take effect on October 1, 1984. [1984 c 221 § 32.]

Chapter 79.91

AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY

Sections

- 79.91.010 Certain aquatic lands subject to easements for removal of valuable materials.
- 79.91.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials.
- 79.91.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.
- 79.91.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.
- 79.91.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.
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- 79.91.080 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.
- 79.91.090 Railroad bridge rights of way across navigable streams.
- 79.91.100 Public bridges or trestles across waterways and aquatic lands.
- 79.91.110 Common carriers may bridge or trestle state waterways.
- 79.91.120 Location and plans of bridge or trestle to be approved—Future alterations.
- 79.91.130 Right of way for utility pipelines, transmission lines, etc.
- 79.91.140 Right of way for utility pipelines, transmission lines, etc.—Procedure to acquire.
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- 79.91.160 Right of way for irrigation, diking, and drainage purposes.
- 79.91.170 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire.
- 79.91.180 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate.
- 79.91.190 Grant of overflow rights.
- 79.91.200 Construction of RCW 79.91.010 through 79.91.190 relating to rights of way and overflow rights.
- 79.91.210 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.
- 79.91.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.91.010 Certain aquatic lands subject to easements for removal of valuable materials. All tide and shore

lands originally belonging to the state, and which were granted, sold or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tide or shore lands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee thereof who has acquired such other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right of way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.01.312. [1982 1st ex.s. c 21 § 48.]

79.91.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials. Every right of way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any tide or shore lands belonging to the state, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW 79.01.316. [1982 1st ex.s. c 21 § 49.]

79.91.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished. Any person having acquired a right of way or easement as provided in RCW 79.91.010 and 79.91.020 over any tidelands or shorelands belonging to the state or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tide or shore lands containing valuable materials, where said land is contiguous to or in proximity of such right of way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving such valuable materials under reasonable rules and regulations and upon payment of just and reasonable charges thereof in accordance with the provisions of RCW 79.01.320. [1982 1st ex.s. c 21 § 50.]

79.91.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other right of way or easement provided for in RCW 79.91.020 and 79.91.030 fail to agree with the state or any grantee or lessee thereof, as to the reasonable and proper rules, regulations, and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which such private right of way or easement is operated, the state or any grantee or

lessee thereof, owning and desiring to have such valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules and regulations, investigate the same, and make such binding reasonable, proper and just rates and regulations in accordance with the provisions of RCW 79.01.324. [1982 1st ex.s. c 21 § 51.]

79.91.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders. Any person owning or operating any right of way or easement subject to the provisions of RCW 79.91.020 through 79.91.040, over and across any tidelands or shorelands belonging to the state or across any beds of navigable waters, and violating or failing to comply with any rule, regulation, or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.91.040, shall be subject to the same penalties provided in RCW 79.01.328. [1982 1st ex.s. c 21 § 52.]

79.91.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way. Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way or easement provided for in RCW 79.91.010 through 79.91.030 over and across any tide or shore lands belonging to the state, or beds of navigable waters or any such lands sold or leased by the state since June 15, 1911, shall file with the department of natural resources upon a form to be furnished for that purpose, a written application for such right of way in accordance with the provisions of RCW 79.01.332. [1982 1st ex.s. c 21 § 53.]

79.91.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser. Any such right of way or easement granted under the provisions of RCW 79.91.010 through 79.91.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted or granted under the provisions of RCW 79.91.010 through 79.91.030, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his last known post office address and by posting a copy of such certificate, or other record of the grant, in the office of the commissioner of public lands with the word "canceled" and the date of such cancellation. [1982 1st ex.s. c 21 § 54.]

79.91.080 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands. Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any tide or shore lands, belonging to the state, shall by

resolution of the legislative body of such county, or city council or other governing body of such city, or proper agency of the United States of America or state agency, cause to be filed with the department of natural resources a petition for a right of way for such road or street or wharf in accordance with the provisions of RCW 79.01.340.

The department may grant the petition if it deems it in the best interest of the state and upon payment for such right of way and any damages to the affected aquatic lands. [1982 1st ex.s. c 21 § 55.]

79.91.090 Railroad bridge rights of way across navigable streams. Any railroad company heretofore or hereafter organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads therein, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of said railway line, or for the more convenient use thereof, if said bridges are so constructed as not to interfere with, impede, or obstruct navigation on such streams: *Provided*, That payment for any such right of way and any damages to those aquatic lands affected be first paid. [1982 1st ex.s. c 21 § 56.]

79.91.100 Public bridges or trestles across waterways and aquatic lands. Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tide or shore lands and harbor areas of the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any such right of way and upon payment for any damages to those aquatic lands affected. [1982 1st ex.s. c 21 § 57.]

79.91.110 Common carriers may bridge or trestle state waterways. Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of such railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any such right of way and any damages to those aquatic lands affected by the right of way shall first be made. [1982 1st ex.s. c 21 § 58.]

79.91.120 Location and plans of bridge or trestle to be approved—Future alterations. The location and

plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.91.090 through 79.91.110 shall be submitted to and approved by the department of natural resources before construction is commenced: *Provided*, That in case the portion of such waterway, river, stream, or watercourse, at the place to be so crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, such location and plans shall also be submitted to and approved by the United States Corps of Engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department of natural resources and the United States Corps of Engineers, it shall be unlawful to deviate from such plans either before or after the completion of such structure, unless the modification of such plans has previously been submitted to, and received the approval of the department of natural resources and the United States Corps of Engineers, as the case may be. Any structure hereby authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the same, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using such structure, to meet the necessities of navigation and commerce in such manner as may be from time to time ordered by the respective officer or officers at such time having jurisdiction of the same, and such orders may be enforced by appropriate action at law or in equity at the suit of the state. [1982 1st ex.s. c 21 § 59.]

79.91.130 Right of way for utility pipelines, transmission lines, etc. A right of way through, over and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat or power. [1982 1st ex.s. c 21 § 60.]

79.91.140 Right of way for utility pipelines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.91.130, the person or the United States of America constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department of natural resources, a map accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipeline, or transmission line, and shall make payment therefor as provided in RCW 79.91.150. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and

egress to maintain and repair the same. The grant shall also include the right to cut all standing timber outside the right of way marked as danger trees located on public lands upon full payment of the appraised value thereof. [1982 1st ex.s. c 21 § 61.]

79.91.150 Right of way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser. On the filing of the plat and field notes, as provided in RCW 79.91.140, the land applied for and any improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the aquatic land applied for, or upon payment of an annual rental when the department of natural resources deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in the office of the commissioner of public lands, and thereafter any sale or lease of the lands affected by such right of way shall be subject to the easement of such right of way: *Provided*, That should the person or the United States of America securing such right of way ever abandon the use of the same for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee. [1982 1st ex.s. c 21 § 62.]

79.91.160 Right of way for irrigation, diking, and drainage purposes. A right of way through, over, and across any tide or shore lands belonging to the state is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1982 1st ex.s. c 21 § 63.]

79.91.170 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant provided for in RCW 79.91.160, the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct such irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department of natural resources a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.91.180, the amount of the appraised value of the said lands used for or included within such right of way. The land within such right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes

required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [1982 1st ex.s. c 21 § 64.]

79.91.180 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as in RCW 79.91-.170, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at full market value thereof. Upon full payment of the appraised value of the lands the department of natural resources shall issue to the applicant a certificate of right of way, and enter the same in the records in the office of the commissioner of public lands and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto. [1982 1st ex.s. c 21 § 65.]

79.91.190 Grant of overflow rights. The department of natural resources shall have the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.01.408. [1982 1st ex.s. c 21 § 66.]

79.91.200 Construction of RCW 79.91.010 through 79.91.190 relating to rights of way and overflow rights. RCW 79.91.010 through 79.91.190, relating to the acquiring of rights of way and overflow rights through, over, and across aquatic lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights of way or other rights thereover, by condemnation proceedings. [1982 1st ex.s. c 21 § 67.]

79.91.210 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain. The department of natural resources may grant to any person such easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.01.414. [1982 1st ex.s. c 21 § 68.]

79.91.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96-.901 through 79.96.905.

Chapter 79.92

AQUATIC LANDS—HARBOR AREAS

Sections

79.92.010 Harbor lines and areas to be established.

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79.92.900	Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.92.010 Harbor lines and areas to be established. It shall be the duty of the board of natural resources acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by section 1 of Article XV of the state Constitution, where such harbor lines and harbor areas have not heretofore been located and established. [1982 1st ex.s. c 21 § 69.]

79.92.020 Relocation of harbor lines by the harbor line commission. Whenever it appears that the inner harbor line of any harbor area heretofore determined has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board of natural resources acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within said inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other tidelands or shorelands of the first class in accordance with the provisions of RCW 79.94.150: *Provided*, That in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature. [1982 1st ex.s. c 21 § 70.]

79.92.030 Relocation of harbor lines authorized by legislature. The commission on harbor lines is hereby authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, King county; the Columbia river in front of the city of Vancouver, Clark

county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, Snohomish county, except no harbor lines shall be established west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5). [1982 1st ex.s. c 21 § 71.]

79.92.035 Modification of harbor lines in Port Gardner Bay. The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.94.450. [1987 c 271 § 5.]

Severability—1987 c 271: See note following RCW 79.95.050.

79.92.060 Terms of harbor area leases. Applications, leases, and bonds of lessees shall be in such form as the department of natural resources shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions thereof. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department shall at any time deem any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by such plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements thereof as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in such lease, shall be constructed within such time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of such lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department: *Provided*, That if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of such existing improvements and need not require further improvements. [1982 1st ex.s. c 21 § 74.]

79.92.070 Construction or extension of docks, wharves, etc., in harbor areas—New lease. If the owner of any harbor area lease upon tidal waters shall desire to construct thereon any wharf, dock, or other convenience of navigation or commerce, or to extend,

enlarge, or substantially improve any existing structure used in connection with such harbor area, and shall deem the required expenditure not warranted by his right to occupy such harbor area during the remainder of the term of his lease, he may make application to the department of natural resources for a new lease of such harbor area for a period not exceeding thirty years. Upon the filing of such application accompanied by such proper plans, drawings or other data, the department shall forthwith investigate the same and if it shall determine that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for such new lease, such rate of rental shall be a fixed percentage, during the term of such lease, on the true and fair value in money of such harbor area determined from time to time by the department as provided in *RCW 79.92.050. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements thereon. The department shall, within ninety days from the filing of such application notify the applicant in writing of the terms and conditions upon which such new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days thereafter elect to accept a new lease of such harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for such harbor area for the term applied for and the existing lease shall thereupon be surrendered and canceled. [1982 1st ex.s. c 21 § 75.]

***Reviser's note:** RCW 79.92.050 was repealed by 1984 c 221 § 30, effective October 1, 1984.

79.92.080 Re-leases of harbor areas. Upon the expiration of any harbor area lease upon tidal waters hereafter expiring, the owner thereof may apply for a re-lease of such harbor area for a period not exceeding thirty years. Such application shall be accompanied with maps showing the existing improvements upon such harbor area and the tidelands adjacent thereto and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of such application the department of natural resources shall forthwith investigate the same and if it shall determine that the character of the wharves, docks or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which such re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area as determined from time to time by the department of natural resources in accordance with *RCW 79.92.050. [1982 1st ex.s. c 21 § 76.]

***Reviser's note:** RCW 79.92.050 was repealed by 1984 c 221 § 30, effective October 1, 1984.

79.92.090 Procedure to re-lease harbor areas. Upon completion of the valuation of any tract of harbor area

applied for under RCW 79.92.080, the department of natural resources shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or his successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the same shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on such terms and conditions and at such rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of such lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date thereof. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area: *Provided*, That if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions and rental, and again advertise the lease for sale as above provided and upon similar notice: *And provided further*, That upon failure to secure any sale of the lease as above prescribed, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent. [1985 c 469 § 61; 1982 1st ex.s. c 21 § 77.]

79.92.100 Regulation of wharfage, dockage, and other tolls. The state of Washington shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use thereof. [1982 1st ex.s. c 21 § 78.]

79.92.110 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.

(1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from such leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is hereby authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section. [1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

Effective date—1983 c 153: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 153 § 2.] "This act" consists of the 1983 c 153 amendment to RCW 79.92.110.

Effective date—1982 2nd ex.s. c 8 § 2: "Section 2 of this act shall take effect July 1, 1983." [1982 2nd ex.s. c 8 § 3.] "Section 2 of this act" is the 1982 2nd ex.s. c 8 amendment to RCW 79.92.110.

79.92.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96-.901 through 79.96.905.

Chapter 79.93

AQUATIC LANDS—WATERWAYS AND STREETS

Sections

79.93.010	First class tide and shore lands to be platted—Public waterways and streets.
79.93.020	Streets, waterways, etc., validated.
79.93.030	Street slopes on tide or shore lands.
79.93.040	Permits to use waterways.
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79.93.900	Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.93.010 First class tide and shore lands to be platted—Public waterways and streets. It shall be the duty of the department of natural resources simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon thereafter as practicable, to survey and plat all tide and shore lands of the first class not heretofore platted, and in platting the same to lay out streets which shall thereby be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through such tidelands, and shall be located at such other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of such platted tide and shore lands and enter such appraisals in its records in the office of the commissioner of public lands. [1982 1st ex.s. c 21 § 80.]

79.93.020 Streets, waterways, etc., validated. All alleys, streets, avenues, boulevards, waterways, and other

public places and highways heretofore located and platted on the tide and shore lands of the first class, or harbor areas, as provided by law, and not heretofore vacated as provided by law, are hereby validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject however to vacation as provided for in this chapter. [1982 1st ex.s. c 21 § 81.]

79.93.030 Street slopes on tide or shore lands. The department of natural resources shall have power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [1982 1st ex.s. c 21 § 82.]

79.93.040 Permits to use waterways. If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the consent of the department of natural resources and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of such port district as provided in RCW 79.90.475.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the state of Washington, except as authorized by RCW 79.90.475. [1984 c 221 § 21; 1982 1st ex.s. c 21 § 83.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

Application to existing property rights: RCW 79.90.545.

79.93.050 Excavation of waterways—Waterways open to public—Tide gates or locks. All waterways excavated through any tide or shore lands belonging to the state of Washington by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through said tide or shore lands, are hereby declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law: *Provided*, That where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the same, the department of natural resources may, in its discretion, authorize such tide gates or locks

to be constructed and may authorize the parties constructing the same to operate them and collect a reasonable toll from vessels passing through said tide gates or locks: *Provided further*, That the state of Washington or the United States of America can, at any time, appropriate said tide gates or locks upon payment to the parties erecting them of the reasonable value of the same at the date of such appropriation, said reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [1982 1st ex.s. c 21 § 84.]

79.93.060 Vacation of waterways—Extension of streets. If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or portion thereof which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of the vacation order of the commissioner of public lands shall be submitted to the United States Army Corps of Engineers for their approval, and if they approve, the waterway or portion thereof is vacated: *Provided*, That if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion thereof that abuts the port district property, shall be vacated.

Upon such vacation of a waterway, the commissioner of public lands shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.94.150, to extend across the portions so vacated any existing streets, or to select such portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. Such selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within such time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.94.150, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of such vacation. [1984 c 221 § 22; 1982 1st ex.s. c 21 § 85.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

Application to existing property rights: RCW 79.90.545.

79.93.070 Copies of waterway permits or leases existing on October 1, 1984, to be delivered to the department—Exception. Copies of waterway permits or leases in existence on October 1, 1984, shall be delivered

to the department of natural resources except in those cases in which the port district enters into an agreement authorizing management of state-owned aquatic land as provided in RCW 79.90.475. [1984 c 221 § 23.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

79.93.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96-.901 through 79.96.905.

Chapter 79.94

AQUATIC LANDS—TIDELANDS AND SHORELANDS

Sections

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79.94.010 Survey to determine area subject to sale or lease. The department of natural resources may cause any tide or shore lands belonging to the state to be surveyed and platted for the purpose of ascertaining and determining the area subject to sale or lease. [1982 1st ex.s. c 21 § 86.]

79.94.020 First class tidelands and shorelands to be platted. It shall be the duty of the department of natural resources simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon thereafter as practicable to survey and plat all tidelands and shorelands of the first class not heretofore platted as provided in RCW 79.93.010. [1982 1st ex.s. c 21 § 87.]

79.94.030 Second class tidelands and shorelands may be platted. The department of natural resources may survey and plat any tidelands and shorelands of the second class not heretofore platted. [1982 1st ex.s. c 21 § 88.]

79.94.040 Tidelands and shorelands of the first class and second class—Plats—Record. The department of natural resources shall prepare plats showing all tidelands and shorelands of the first class and second class, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all such aquatic lands, with reference to the lines of the United States survey of the abutting upland, and shall prepare in well bound books a record of its proceedings, including a list of said tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the same, which plats and books shall be in triplicate and the department shall file one copy of such plats and records in the office of the commissioner of public lands, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [1982 1st ex.s. c 21 § 89.]

79.94.050 Tidelands and shorelands of the first class and second class—Appraisal—Record. In appraising tidelands or shorelands of the first class or second class platted or replatted after March 26, 1895, the department of natural resources shall appraise each lot, tract or piece of land separately, and shall enter in a well bound book to be kept in the office of the commissioner of public lands a description of each lot, tract or piece of tide or shore land of the first or second class, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements. [1982 1st ex.s. c 21 § 90.]

79.94.060 Tidelands and shorelands of the first class and second class—Notice of filing plat and record of appraisal—Appeal. The department of natural resources shall, before filing in the office of the commissioner of public lands the plat and record of appraisal of any tidelands or shorelands of the first or second class platted and appraised by it, cause a notice to be published once each week for four consecutive weeks in a newspaper published and of general circulation in the county wherein the land covered by such plat and record are situated, stating that such plat and record, describing it, is complete and subject to inspection at the office of the commissioner of public lands, and will be filed on a certain day to be named in the notice.

Any person entitled to purchase under RCW 79.94-.150 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisal fixed by the department upon such lands, or any part thereof, may within sixty days after the filing

of such plat and record in the office of the commissioner (which shall be done on the day fixed in said notice), appeal from such appraisal to the superior court of the county in which the tide or shore lands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.90.400.

The prosecuting attorney of any county, or city attorney of any city, in which such aquatic lands are located, shall at the request of the governor, or of ten freeholders of the county or city, in which such lands are situated, appeal on behalf of the state, or the county, or city, from any such appraisal in the manner provided in this section. Notice of such appeal shall be served upon the department of natural resources through the administrator, and it shall be his duty to immediately notify all persons entitled to purchase under RCW 79.94.150 and claiming a preference right to purchase the lands subject to the appraisal.

Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department of natural resources, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner of public lands. The appraisal fixed by the court shall be final. [1982 1st ex.s. c 21 § 91.]

79.94.070 Tidelands and shorelands of the first class—Preference right of upland owner—How exercised. Upon platting and appraisal of tidelands or shorelands of the first class as in this chapter provided, if the department of natural resources shall deem it for the best public interest to offer said tide or shore lands of the first class for lease, the department shall cause a notice to be served upon the owner of record of uplands fronting upon the tide or shore lands to be offered for lease if he be a resident of the state, or if he be a non-resident of the state, shall mail to his last known post office address, as reflected in the county records, a copy of the notice notifying him that the state is offering such tide or shore lands for lease, giving a description of those lands and the department's appraised fair market value of such tide or shore lands for lease, and notifying such owner that he has a preference right to apply to lease said tide or shore lands at the appraised value for the lease thereof for a period of sixty days from the date of service of mailing of said notice. If at the expiration of sixty days from the service or mailing of the notice, as above provided, there being no conflicting applications filed, and the owner of the uplands fronting upon the tide or shore lands offered for lease, has failed to avail himself of his preference right to apply to lease or to pay to the department the appraised value for lease of the tide or shore lands described in said notice, then in that event, said tide or shore lands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

If at the expiration of sixty days two or more claimants asserting a preference right to lease shall have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department of natural resource[s] as the best interests of the state require in accord with the procedures prescribed by chapter 34.04 RCW: *Provided*, That any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for such preference right. [1982 1st ex.s. c 21 § 92.]

79.94.080 Tide and shore lands—Sale of remaining lands. Any tide or shore lands of the first class remaining unsold, and where there is no pending application for the purchase of the same under claim of any preference right, when otherwise permitted under RCW 79.94.150 to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department of natural resources whenever it shall deem it advisable and for the best interest of the state may reappraise such lands in the same manner as provided for the appraisal of state lands. [1982 1st ex.s. c 21 § 93.]

79.94.090 Sale of tidelands other than first class. All tidelands, other than first class, shall be offered for sale, when otherwise permitted under RCW 79.94.150 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tidelands, and each applicant shall furnish a copy of the United States field notes, certified to by the officer in charge thereof, of said meander line with his application, and shall pay one-tenth of the purchase price on the date of sale. [1982 1st ex.s. c 21 § 94.]

79.94.100 Tidelands and shorelands of the first and second class—Petition for replat—Replating and reappraisal—Vacation by replat. Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tide or shore lands of the first or second class, heretofore or hereafter platted or replatted, or within any portion of any such plat in which there are unsold tide or shore lands belonging to the state, shall file a petition with the department of natural resources accompanied by proof of service of such petition upon the city council, or other governing body, of the city or town in which the tide or shore lands described in the petition are situated, or upon the legislative body of the county in which such tide or shore lands outside of any incorporated city or town are situated, asking for a replat of such tide or shore lands, the department is authorized and empowered to replat said tide or shore lands described in such petition, and all unsold tide or shore lands situated within such replat shall be reappraised as provided for the original appraisal of tide or shore lands: *Provided*,

That any streets or alleys embraced within such plat or portion of plat, vacated by the replat hereby authorized shall vest in the owner or owners of the lands abutting thereon. [1982 1st ex.s. c 21 § 95.]

79.94.110 Tidelands and shorelands of the first and second class—Dedication of replat—All interests must join. If in the preparation of a replat provided for in RCW 79.94.100 by the department of natural resources, it becomes desirable to appropriate any tidelands or shorelands heretofore sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to such tidelands or shorelands desired for public places shall join in the dedication of such replat before it shall become effective. [1982 1st ex.s. c 21 § 96.]

79.94.120 Tidelands and shorelands of the first and second class—Vacation by replat—Preference right of tideland or shoreland owner. If any street, alley, waterway, or other public place theretofore platted, is vacated by a replat as provided for in RCW 79.94.100 and 79.94.110, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between such new street, alley, waterway, or other public place, and tidelands or shorelands theretofore sold, the owner of the adjacent tidelands or shorelands theretofore sold shall have the preference right for sixty days after the final approval of such plat to purchase the unsold tidelands or shorelands so intervening at the appraised value thereof, if otherwise permitted under RCW 79.94.150 to be sold. [1982 1st ex.s. c 21 § 97.]

79.94.130 Tidelands and shorelands of the first and second class—Vacation procedure cumulative. RCW 79.94.100 through 79.94.120 are intended to afford a method of procedure, in addition to other methods provided in this chapter for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands of the first or second class. [1982 1st ex.s. c 21 § 98.]

79.94.140 Tidelands and shorelands of the first and second class—Effect of replat. A replat of tidelands or shorelands of the first or second class heretofore, or hereafter, platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other public places theretofore dedicated, when otherwise permitted by RCW 79.94.150, and the dedication of new streets, alleys, waterways, and other public places appearing upon such replat, when the same is recorded and filed as in the case of original plats. [1982 1st ex.s. c 21 § 99.]

79.94.150 First and second class tidelands and shorelands and waterways of state to be sold only to public entities—Leasing—Limitation. (1) This section shall apply to:

(a) First class tidelands as defined in RCW 79.90.030;

(b) Second class tidelands as defined in RCW 79.90.035;

(c) First class shorelands as defined in RCW 79.90.040;

(d) Second class shorelands as defined in RCW 79.90.045, except as included within RCW 79.94.210;

(e) Waterways as described in RCW 79.93.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all tidelands and shorelands enumerated in subsection (1) of this section owned by the state of Washington shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years: *Provided*, That nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

(a) Be construed to cancel an existing sale contract;

(b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;

(c) Prevent exchange involving state-owned tide and shore lands. [1982 1st ex.s. c 21 § 100.]

79.94.160 Sale of state-owned tide or shore lands to municipal corporation or state agency—Authority to execute agreements, deeds, etc. The department of natural resources may with the advice and approval of the board of natural resources sell state-owned tide or shore lands at the appraised market value to any municipal corporation or agency of the state of Washington when said land is to be used solely for municipal or state purposes: *Provided*, That the department shall with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect such sale or exchange. [1982 1st ex.s. c 21 § 101.]

79.94.170 Construction of RCW 79.94.150 and 79.94.170—Use and occupancy fee where unauthorized improvements placed on publicly owned aquatic lands. Nothing in RCW 79.94.150 and 79.94.170 shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the state-wide public interest.

The department of natural resources may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on publicly owned aquatic lands. [1982 1st ex.s. c 21 § 102.]

79.94.210 Second class shorelands on navigable lakes—Sale. (1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest: *Provided*, That the

purpose of this section is to remove the prohibition contained in RCW 79.94.150 regarding the sale of second class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150, the department of natural resources may sell second class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board of natural resources has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum depth of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days of the date the department notified the owner regarding the price. The board of tax appeals shall review such cases in a "contested case" proceeding as described in chapter 34.04 RCW, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.04.130. [1982 1st ex.s. c 21 § 106.]

79.94.220 Second class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle. In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second class shorelands bordering upon navigable waters of this state by description wherein the water boundary of the shorelands so purchased is not defined, such water boundary shall be the line of ordinary navigation in such water; and whenever such waters have been or shall hereafter be lowered by any action done or authorized either by the state of Washington or the United States, such water boundary shall thereafter be the line of ordinary navigation as the same shall be found in such waters after such lowering, and there is hereby granted and confirmed to every such purchaser, his heirs and assigns, all such lands: *Provided however*, That RCW 79.94.220 and 79.94.230 shall not apply to such portions of such second class shorelands which shall, as provided by RCW 79.94.230, be selected by the department of natural resources for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes: *Provided further*, That all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of said lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24

north, range 4 east, W.M., are hereby reserved for public uses and are hereby granted and donated to the city of Seattle for public park, parkway and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of such lands so donated from such purposes shall cause the title to said lands to revert to the state. [1982 1st ex.s. c 21 § 107.]

79.94.230 Second class shorelands—Platting—Selection for slips, docks, wharves, etc. It shall be the duty of the department of natural resources to survey such second class shorelands and in platting such survey to designate thereon as selected for public use all of such shorelands as in the opinion of the department is available, convenient or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of such plat in the office of the commissioner of public lands, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate, the title to and control of any lands so selected and designated upon such plat for parkways and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city, and the title to all selections for slips, docks, wharves, warehouses and other public purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situate. [1982 1st ex.s. c 21 § 108.]

79.94.240 Second class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect. It shall be the duty of the department of natural resources to plat for the public use harbor area in front of such portions of the shorelands of Lake Washington heretofore sold as second class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area: *Provided however*, That RCW 79.94.240 and 79.94.250 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area heretofore platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands heretofore purchased from the state as second class shorelands is hereby confirmed to such purchaser, his heirs and assigns, out to the inner harbor line heretofore established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.94.230 and 79.94.250, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except

reservations shown thereon for harbor area, and reservations in such harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. Said department shall in platting said harbor area make a new plat showing all the harbor area on Lake Washington already platted under said sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board of natural resources acting as the harbor line commission, and the filing of said plat in the office of the commissioner of public lands, the title to all such harbor areas so selected shall remain in the state of Washington, and such harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of such harbor area. [1982 1st ex.s. c 21 § 109.]

79.94.250 Second class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title. Immediately after establishing the harbor area provided for in RCW 79.94.240, it shall be the duty of the department of natural resources to make a plat designating thereon all shorelands, of the first and second class, not theretofore sold by the state of Washington, and to select for the use of the public out of such shorelands, or out of harbor areas in front thereof, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as such shorelands may be available for any or all such public purposes.

Upon the filing of such plat of shorelands with such reservations and selections thereon in the office of the commissioner of public lands, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which they are situate. The title to and control of any land so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside the corporate limits of any city or town, and if the same form a part of the general parkway and boulevard system of the city of the first class, be in such city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situated, and any sales of such shorelands when otherwise permitted by law shall be made subject to such selection and reservation for public use. [1982 1st ex.s. c 21 § 110.]

79.94.260 Second class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting. If application is made to purchase or lease any shorelands of the second class and the

department of natural resources shall deem it for the best public interest to offer said shorelands of the second class for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if he be a resident of the state, or if the upland owner be a non-resident of the state, shall mail to his last known post office address, as reflected in the county records a copy of a notice notifying him that the state is offering such shorelands for sale or lease, giving a description of the department's appraised fair market value of such shorelands for sale or lease, and notifying such upland owner that he has a preference right to purchase, if such purchase is otherwise permitted under RCW 79.94.150, or lease said shorelands at the appraised value thereof for a period of thirty days from the date of the service or mailing of said notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to avail himself of his preference right to purchase, as otherwise permitted under RCW 79.94.150, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in said notice, then in that event, except as otherwise provided in this section, said shorelands may be offered for sale, when otherwise permitted under RCW 79.94.150, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

The department of natural resources shall authorize the sale or lease, whether to abutting upland owners or others, only if such sale or lease would be in the best public interest and is otherwise permitted under RCW 79.94.150. It is the intent of the legislature that whenever it is in the best public interest, the shorelands of the second class managed by the department of natural resources shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

In all cases where application is made for the lease of any second class shorelands adjacent to upland, under the provisions of this section, the same shall be leased per lineal chain frontage, and the United States field notes of the meander line shall accompany each application as required for the sale of such lands, and when application is made for the lease of second class shorelands separated from the upland by navigable waters, the application shall be accompanied by the plat and field notes of a survey of the lands applied for, as required with applications for the purchase of such lands.

If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.94.150 or to obtain an exclusive lease at appraised full market value or rental, the department deems that such sale or lease is not in the best public interest, or if property rights in state-owned second class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of such application to purchase or lease, or on reaching a decision to withdraw, sell or assign such shorelands to a public

agency, and: (1) Make a formal finding that the body of water adjacent to such shorelands is navigable; (2) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify such interest and the factor or factors amounting to such inconsistency; and (3) provide for the review of said decision in accordance with the procedures prescribed by chapter 34.04 RCW.

Notwithstanding the above provisions, the department may cause any of such shorelands to be platted as is provided for the platting of shorelands of the first class, and when so platted such lands shall be sold, when otherwise permitted under RCW 79.94.150 to be sold, or leased in the manner provided for the sale or lease of shorelands of the first class. [1982 1st ex.s. c 21 § 111.]

79.94.270 Second class tide or shore lands detached from uplands by navigable water—Sale. Tide or shore lands of the second class which are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.94.150 to be sold, but in no case at less than five dollars per acre. An applicant to purchase such tide or shore lands shall, at his own expense, survey and file with his application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of said land with his application. The department of natural resources shall examine and test said plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the same to be corrected or may reject the same and cause a new survey to be made. [1982 1st ex.s. c 21 § 112.]

79.94.280 First class unplatted tide or shore lands—Lease preference right to upland owners—Lease for booming purposes. The department of natural resources is authorized to lease to the abutting upland owner any unplatted first class tide or shore lands.

The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for said tide or shore lands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years from the date thereof, and every such lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that such tide or shore lands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or his successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion thereof, if the department shall deem it to be in the best interests of the state to re-lease the same, for succeeding periods not exceeding five years each at such rental and upon such terms and conditions as may be prescribed by said department.

In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of

such lands, the department may lease the same to any person for booming purposes under the terms and conditions of this section: *Provided*, That failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of such lease and such land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department of natural resources. [1982 1st ex.s. c 21 § 113.]

79.94.290 Second class tide or shore lands—Lease for booming purposes. The department of natural resources is authorized to lease any second class tide or shore lands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of such lease, for such annual rental and upon such terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any such lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions thereof.

The lessee of any such lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting such service and upon the same terms and without discrimination, and may charge and collect tolls for such service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the same are applicable, as are imposed upon boom companies organized under the laws of the state: *Provided*, That failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of such lease, and such lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by his original lease for a further term, not exceeding ten years, at such rental and upon such terms and conditions as may be prescribed by the department of natural resources. [1982 1st ex.s. c 21 § 114.]

79.94.300 First and second class tide or shore lands—Preference rights, time limit on exercise. All preference rights to purchase tide or shore lands of the first or second class, when otherwise permitted by RCW 79.94.150 to be purchased, awarded by the department of natural resources, or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands,

other than capitol building lands, and upon failure to make such payment such preference rights shall expire. [1982 1st ex.s. c 21 § 115.]

79.94.310 First and second class tide or shore lands—Accretions—Lease. Any accretions that may be added to any tract or tracts of tide or shore lands of the first or second class heretofore sold, or that may hereafter be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions shall have been first surveyed under the direction of the department of natural resources: *Provided*, That the owner of the adjacent tide or shore lands shall have the preference right to purchase said lands produced by accretion, when otherwise permitted by RCW 79.94.150 to be sold, for thirty days after said owner of the adjacent tide or shore lands shall have been notified by registered mail of his preference right to purchase such accreted lands. [1982 1st ex.s. c 21 § 116.]

79.94.320 Tide or shore lands of the first or second class—Failure to re-lease tide or shore lands—Appraisal of improvements. In case any lessee of tide or shore lands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or his successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.94.150 to be purchased, or re-lease from the state the tide or shore lands formerly covered by his lease, when the same are offered for sale or re-lease, then and in that event the department of natural resources shall appraise and determine the value of all improvements existing upon such tide or shore lands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising said property above high tide, or high water, whether filled or raised by the lessee or his successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by such lessee or his successors in interest. In case the lessee or his successor in interest is dissatisfied with the appraised value of such improvements as determined by the department, he shall have the right of appeal to the superior court of the county wherein said tide or shore lands are situated, within the time and according to the method prescribed in RCW 79.90.400 for taking appeals from decisions of the department.

In case such tide or shore lands are leased, or sold, to any person other than such lessee or his successor in interest, within three years from the expiration of the former lease, the bid of such subsequent lessee or purchaser shall not be accepted until payment is made by such subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to such former lessee or his successor in interest.

In case such tide or shore lands are not leased, or sold, within three years after the expiration of such former lease, then in that event, such improvements existing on

the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land. [1982 1st ex.s. c 21 § 117.]

79.94.330 Location of line dividing tidelands from shorelands in tidal rivers. The department of natural resources is hereby authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in such river from the shorelands in such river, and such classification or the location of such dividing line shall be final and not subject to review, and the department shall enter the location of said line upon the plat of the tide and shore lands affected. [1982 1st ex.s. c 21 § 118.]

79.94.340 Queets to Flattery tidelands declared public highway—Reservation from sale or lease—Leases not to be extended. The tidelands along the shore and beach of the Pacific ocean from the mouth of the Queets river north to Cape Flattery in the state of Washington, excepting, however, such rights as may have been conveyed by the state through deeds covering the second class tidelands in front of section 24, township 31 north, range 16 west, W.M., be and the same are hereby declared a public highway forever and as such highway shall remain forever open to the use of the public.

No part of the tidelands along said shore and beach shall ever be sold, or otherwise disposed of, or leased for any purpose other than the extraction of petroleum, gas, or minerals.

No leases, except those issued for extraction of petroleum, gas, or minerals, now existing on or for any part or parts of said tidelands along said shore and beach shall be renewed or extended. [1982 1st ex.s. c 21 § 119.]

79.94.350 Damon's Point to Queets tidelands declared public highway—Reservation from sale, lease, etc. The shore and beach of the Pacific ocean including the area or space lying between ordinary high tide and extreme low tide (as such shore and beach now are or hereafter may be) from the southerly point of Damon's Point on the north side of the entrance to Grays Harbor to the mouth of the Queets river, state of Washington, be and the same are hereby declared a public highway forever, and such highway shall remain forever open to the use of the public.

No part of said shore or beach shall ever be sold, leased, or otherwise disposed of. [1982 1st ex.s. c 21 § 120.]

79.94.360 Columbia river to Peterson's Point tidelands declared public highway—Reservation from sale, lease, etc. The shore and beach of the Pacific ocean, including the area or space lying, abutting, or fronting on said ocean and between ordinary high tide and extreme low tide (as such shore and beach are now or hereafter

may be) from the Columbia river or Cape Disappointment on the south to a point three hundred feet southerly from the south line of the government jetty on Peterson's Point, state of Washington, on the north, be and the same are hereby declared a public highway forever, and as such highway shall remain forever open to the use of the public.

No part of said shore or beach shall ever be sold, conveyed, leased, or otherwise disposed of. [1982 1st ex.s. c 21 § 121.]

79.94.370 Highways established by Laws of 1901 and 1935—Portion declared public recreation area—Reservation. That portion of the public highway as established by chapter 54, Laws of 1935, chapter 105, Laws of 1901, and chapter 110, Laws of 1901, lying between the line of vegetation and the line of mean high tide, as such lines now are or may hereafter be, is hereby declared a public recreation area and is hereby set aside and forever reserved for the use of the public. [1982 1st ex.s. c 21 § 122.]

79.94.380 Highways—Acquisition of property. The department of natural resources may acquire by purchase, gift, exchange, or condemnation any lands, property, or interest therein from any political subdivision of the state, municipal corporation, the federal government, or any person for the purpose of expanding, improving, or facilitating the use of lands reserved under RCW 79.94.340 through 79.94.370 for such public highway and recreation purposes. [1982 1st ex.s. c 21 § 123.]

79.94.390 Certain tidelands reserved for recreational use and taking of fish and shellfish. The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 75.08.011: Parcel No. 1. (Point Whitney) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above described tidelands of the second class conveyed to the state of Washington, department of fisheries and *game through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The tidelands of the second class lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20

chains, more or less, from the point of intersection of the north line of said lot 5 and said meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of tidelands of the second class conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the first class, and tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as tidelands of the second class through

deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any tidelands of the second class in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Tidelands—Upland owner use: "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

79.94.400 Access to and from tidelands reserved for recreational use and taking of fish and shellfish. The director of fisheries may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.94.390. [1982 1st ex.s. c 21 § 125.]

79.94.410 Tidelands and shorelands—Use of tide and shore lands granted to United States—Purposes—Limitations. The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining thereon forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, be and the same is hereby granted to the United States, upon payment for such rights, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: *Provided*, That this grant shall not extend to or include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States. [1982 1st ex.s. c 21 § 126.]

79.94.420 Tidelands and shorelands—Use of tide and shore lands granted to United States—Application—Proof of upland use—Conveyance. Whenever application is made to the department of natural resources by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.94.410, upon proof being made to said department of natural resources, that such uplands are so held by the United States for such purposes, and upon payment for such land, it shall cause such fact to be entered in the records of the office of the commissioner of public lands and the department shall certify such fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of such lands, for such purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands. [1982 1st ex.s. c 21 § 127.]

79.94.430 Tidelands and shorelands—Use of tide and shore lands granted to United States—Easements over tide or shore lands to United States. Whenever application is made to the department of natural resources, by any department of the United States government, for the use of any tide or shore lands belonging to the state, for any public purpose, and said department shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purposes, said department may reserve such tide or shore lands from public sale and grant the use of them to the United States, upon payment for such land, so long as it may require the use of them for such public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of said tide or

shore lands to the United States, so long as it shall require the use of them for said public purpose. [1982 1st ex.s. c 21 § 128.]

79.94.440 Tidelands and shorelands—Use of tide and shore lands granted to United States—Reversion on cessation of use. Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.94.410, or shall cease to use any tide or shore lands for the purpose mentioned in RCW 79.94.430, the grant or easement of such tide or shore lands shall be terminated thereby, and said tide or shore lands shall revert to the state without resort to any court or tribunal. [1982 1st ex.s. c 21 § 129.]

79.94.450 United States Navy base—Exchange of property—Procedure. The department of natural resources is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department of natural resources shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department of natural resources will follow the requirements outlined in RCW 79.08.015 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board of natural resources. [1987 c 271 § 4.]

Severability—1987 c 271: See note following RCW 79.95.050.

79.94.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96-.901 through 79.96.905.

Chapter 79.95

AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

Sections	
79.95.010	Lease of beds of navigable waters.
79.95.020	Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.
79.95.030	Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.
79.95.040	Lease of beds of navigable waters—Preference right to re-lease.
79.95.050	United States Navy base—Legislative findings and declaration.
79.95.060	Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.
79.95.900	Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.95.010 Lease of beds of navigable waters. Except as provided in RCW 79.95.060, the department of natural resources may lease to the abutting tide or shore land owner or lessee, the beds of navigable waters lying below

the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in section 1, Article XVII, of the Constitution of the state.

In case the abutting tide or shore lands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease such beds to any person for a period not exceeding ten years for booming purposes.

Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front thereof. [1987 c 271 § 2; 1982 1st ex.s. c 21 § 130.]

Severability—1987 c 271: See note following RCW 79.95.050.

79.95.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser. The department of natural resources shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease: *Provided*, That in fixing such rental, the department shall not take into account the value of any improvements heretofore or hereafter placed upon the lands by the lessee.

No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second class tide or shore lands; or a term longer than ten years if in front of unplatted first class tide or shore lands leased under the provisions of RCW 79.94.280, in which case said lease shall be subject to the same terms and conditions as provided for in the lease of such unplatted first class tide or shore lands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of said lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the commissioner of public lands. [1982 1st ex.s. c 21 § 131.]

79.95.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications. The applicant for a lease under the provisions of this chapter shall first obtain from the United States Army Corps of Engineers or other federal regulatory agency, a permit to place structures or improvements in said navigable waters and file with the department of natural resources a copy of said permit. No structures or improvements shall be constructed beyond a point authorized by the Corps of Engineers or the department of natural resources and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon such areas with the department of natural resources, said plans and specifications to be the same as provided for in the case of the lease of harbor areas. [1982 1st ex.s. c 21 § 132.]

79.95.040 Lease of beds of navigable waters—Preference right to re-lease. At the expiration of any lease issued under the provisions of this chapter, the lessee or his successors or assigns, shall have a preference right to re-lease the area covered by the original lease or any portion thereof if the department of natural resources deems it to be in the best interest of the state to re-lease the same. Such re-lease shall be for such term as specified by the provisions of this chapter, and at such rental and upon such conditions as may be prescribed by the department: *Provided*, That if such preference right is not exercised, the rights and obligations of the lessee, the department of natural resources, and any subsequent lessee shall be the same as provided in RCW 79.94.320 relating to failure to re-lease tide or shore lands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for such improvements from the United States Army Corps of Engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of such permit together with plans and specifications of such improvements with the department of natural resources. [1982 1st ex.s. c 21 § 133.]

79.95.050 United States Navy base—Legislative findings and declaration. The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature hereby declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately. [1987 c 271 § 1.]

Severability—1987 c 271: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 271 § 6.]

79.95.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions. (1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner of public lands is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal

site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the Federal Clean Water Act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the Army Corps of Engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the Clean Water Act, 33 U.S.C. Sec. 1251, et seq.; (c) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601, et seq.; (d) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law. [1987 c 271 § 3.]

Severability—1987 c 271: See note following RCW 79.95.050.

79.95.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21. See RCW 79.96.901 through 79.96.905.

Chapter 79.96

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, AND OTHER AQUACULTURAL USES

Sections

79.96.010 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.

79.96.020 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.

79.96.030 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fisheries—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.

79.96.040 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.

79.96.050 Leasing lands for shellfish cultivation or other aquaculture use—Renewal lease.

79.96.060 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.

79.96.070 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.

79.96.080 Geoduck harvesting—Leases, agreements, regulation.

79.96.085 Geoduck harvesting—Designation of aquatic lands.

79.96.090 Lease of tidelands set aside as oyster reserves.

79.96.100 Inspection and report by director of fisheries.

79.96.110 Vacation of reserve—Lease of lands.

79.96.120 Sale of reserved or reversionary rights in tidelands.

79.96.901 Savings—1982 1st ex.s. c 21.

79.96.902 Captions—1982 1st ex.s. c 21.

79.96.903 Severability—1982 1st ex.s. c 21.

79.96.904 Effective date—1982 1st ex.s. c 21 §§ 176, 179.

79.96.905 Effective date—1982 1st ex.s. c 21.

79.96.906 Intensive management plan for geoducks—Evaluation of program—Report—1984 c 221.

79.96.907 Evaluation of seaweed aquaculture program—Report—1984 c 221.

79.96.010 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use. The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by section 1, Article XV, of the Washington state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed ten years.

Where the lands are used for the cultivation and harvesting of oysters, the parcels leased shall not exceed forty acres.

Where the lands are used for the cultivation and harvesting of clams or other aquaculture use, the department of natural resources may, in its discretion, grant leases for larger parcels.

Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [1982 1st ex.s. c 21 § 134.]

79.96.020 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit. Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department of natural resources, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by such reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars which deposit shall be returned to the applicant in case a lease is not granted. [1982 1st ex.s. c 21 § 135.]

79.96.030 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fisheries—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating. (1) The department of natural resources, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fisheries of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fisheries shall cause an inspection of the lands applied for to be made and shall make a full report to the department of natural resources of his findings as to whether it is necessary, in order to

protect existing natural oyster beds, and to secure adequate seeding thereof, to retain the lands described in the application for lease or any part thereof, and in the event the director deems it advisable to retain the lands or any part thereof for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the same shall not be subject to lease. However, if the director determines that the lands applied for or any part thereof may be leased, he shall so notify the department of natural resources and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on said lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In his report to the department, the director shall recommend a minimum rental for said lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fisheries. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [1987 c 374 § 1; 1982 1st ex.s. c 21 § 136.]

79.96.040 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers. Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall cause the same to be surveyed by a registered land surveyor, and he shall furnish to the department of natural resources and to the director of fisheries, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also cause the boundaries of the leased premises to be marked by piling monuments or other markers of a permanent nature as the director of fisheries may direct. [1982 1st ex.s. c 21 § 137.]

79.96.050 Leasing lands for shellfish cultivation or other aquaculture use—Renewal lease. The department of natural resources may, upon the filing of an application for a renewal lease, cause the tidelands or beds of navigable waters to be inspected, and if he deem[s] it in the best interests of the state to re-lease said lands, he shall issue to the applicant a renewal lease for such further period not exceeding ten years and under such terms and conditions as may be determined by the department: *Provided*, That in the case of an application for a renewal lease it shall not be necessary for the lands

to be inspected and reported upon by the director of fisheries. [1982 1st ex.s. c 21 § 138.]

79.96.060 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish. All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of said lease, the lands described therein shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall thereupon revert to and become the property of the state and that the same are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of said lands if at any time the same are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [1982 1st ex.s. c 21 § 139.]

79.96.070 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands. If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall become unfit and valueless for any such purposes, the lessee or his assigns, upon certifying such fact under oath to the department of natural resources, together with the fact that he has abandoned such land, shall be entitled to make application for other lands for such purposes. [1982 1st ex.s. c 21 § 140.]

79.96.080 Geoduck harvesting—Leases, agreements, regulation. (1) The department of natural resources may enter into leases or harvesting agreements for the harvesting of geoducks. The department of natural resources may place terms and conditions in the leases or harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any lease or harvesting agreement by suspending or canceling the lease or harvesting agreement or through any other means contained in the lease or harvesting agreement. The department of natural resources may cancel any lease or harvesting agreement upon receiving a report from the department of fisheries of the person's second violation of the geoduck licensing or harvesting provisions under Title 75 RCW. Any lessee may terminate a lease entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the lessee, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days, during the term of the harvesting agreement. Upon termination of the lease, the lessee shall be reimbursed by the lessor for the cost paid on the lease less the value of the harvest already accomplished by the lessee on the leasehold.

(2) After May 8, 1979, all leases or harvesting agreements under this title for the purpose of harvesting geoduck clams shall require the lessee and the lessee's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational

safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on July 1, 1983 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): *Provided*, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All leases shall provide that failure to comply with these standards is cause for suspension or cancellation of the lease: *Provided further*, That for the purposes of this subsection if the lessee is the holder of a tract license and contracts with another entity for the harvesting of geoducks, the lease shall not be suspended or canceled if the lessee terminates its business relationship with such entity until compliance with the subsection is secured. [1982 1st ex.s. c 21 § 141.]

79.96.085 Geoduck harvesting—Designation of aquatic lands. The department of natural resources shall designate the areas of aquatic lands owned by the state which are available for geoduck harvesting by licensed geoduck harvesters in accordance with RCW 79.01.124. [1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 75.28.286.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Commercial harvesting of geoducks: RCW 75.24.100, 75.28.287.

79.96.090 Lease of tidelands set aside as oyster reserves. The department of natural resources is hereby authorized to lease first or second class tidelands which have heretofore or which may hereafter be set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [1982 1st ex.s. c 21 § 142.]

79.96.100 Inspection and report by director of fisheries. The department of natural resources, upon the receipt of an application for the lease of any first or second class tidelands owned by the state which have heretofore or which may hereafter be set aside as state oyster reserves, shall notify the director of fisheries of the filing of the application describing the lands applied for. It shall be the duty of the director of fisheries to cause an inspection of the reserve to be made for the purpose of determining whether said reserve or any part thereof should be retained as a state oyster reserve or vacated. [1982 1st ex.s. c 21 § 143.]

79.96.110 Vacation of reserve—Lease of lands. In case the director of fisheries approves the vacation of the whole or any part of said reserve, the department of natural resources may vacate and offer for lease such parts or all of said reserve as it deems to be for the best interest of the state, and all moneys received for the lease of such lands shall be paid to the department of natural resources in accordance with *RCW 79.94.190: *Provided*, That nothing in RCW 79.96.090 through 79.96.110 shall be construed as authorizing the lease of any tidelands which have heretofore, or which may

hereafter, be set aside as state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties: *Provided further*, That any portion of Plat 138, Clifton's Oyster Reserve, which has already been vacated, may be leased by the department. [1982 1st ex.s. c 21 § 144.]

*Reviser's note: RCW 79.94.190 was repealed by 1984 c 221 § 30, effective October 1, 1984.

79.96.120 Sale of reserved or reversionary rights in tidelands. Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24 of the Laws of 1895, or chapter 25 of the Laws of 1895, or chapter 165 of the Laws of 1919, or either such reserved or reversionary right if only one exists, being filed in the office of the commissioner of public lands by the owner of such tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to such lands, the department of natural resources, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.94.150, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued therefor as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale therefor, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department of natural resources for failure to comply with its provisions, and upon the completion of the payments as provided in such contract to cause a deed to the lands described in the contract to be issued to the holder thereof as in the case of the sale of state lands. [1982 1st ex.s. c 21 § 145.]

79.96.901 Savings—1982 1st ex.s. c 21. The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 § 181.]

79.96.902 Captions—1982 1st ex.s. c 21. Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 § 182.]

79.96.903 Severability—1982 1st ex.s. c 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 21 § 184.]

79.96.904 Effective date—1982 1st ex.s. c 21 §§ 176, 179. Sections 176 (amending RCW 79.01.525) and

179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1982 1st ex.s. c 21 § 185.]

79.96.905 Effective date—1982 1st ex.s. c 21. Except as provided in RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 § 186.]

79.96.906 Intensive management plan for geoducks—Evaluation of program—Report—1984 c 221. The department of natural resources may enter into agreements with the department of fisheries for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery.

The department of natural resources shall evaluate the progress of the intensive geoduck management program and provide a written report to the legislature by December 1, 1990, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the intensive geoduck management program. [1984 c 221 § 26.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

79.96.907 Evaluation of seaweed aquaculture program—Report—1984 c 221. The department of natural resources shall evaluate the progress of the seaweed aquaculture program and provide a written report to the legislature by December 1, 1987, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the seaweed aquaculture program. The expenditure of state funds for seaweed aquaculture shall, after June 30, 1989, be limited to those funds received pursuant to RCW 79.64.040 which are derived from commercial seaweed leases of state aquatic lands, unless otherwise expressly provided by law. [1984 c 221 § 27.]

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

Title 80

PUBLIC UTILITIES

Chapters

- 80.01 Utilities and transportation commission.**
- 80.04 Regulations—General.**
- 80.08 Securities.**
- 80.12 Transfers of property.**
- 80.16 Affiliated interests.**
- 80.20 Investigation of public service companies.**
- 80.24 Regulatory fees.**
- 80.28 Gas, electrical, and water companies.**
- 80.32 Electric franchises and rights of way.**
- 80.36 Telecommunications.**
- 80.40 Underground Natural Gas Storage Act.**
- 80.50 Energy facilities—Site locations.**
- 80.52 Energy financing voter approval act.**
- 80.54 Attachments to transmission facilities.**
- 80.58 Nonpolluting power generation exemption.**
- 80.62 Heat suppliers.**
- 80.66 Radio communications service companies.**
- 80.98 Construction.**

Reviser's note: Throughout this title the name and designation "public service commission" and terms of similar import have been changed to read "utilities and transportation commission" under the authority of 1961 c 290 § 1, which reads "From and after the effective date of this act the Washington public service commission shall be known and designated as the Washington utilities and transportation commission." The effective date of the act was midnight June 7, 1961; see preface 1961 session laws.

Agreements between electrical public utilities and cooperatives: Chapter 54.48 RCW.

Assessment of public utilities for property tax purposes: Chapter 84.12 RCW.

Conversion of overhead electric and communication facilities to underground: Chapter 35.96 RCW, RCW 36.88.410 through 36.88.480.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Corporations, annual license fee of public service companies: RCW 23A.40.080.

Easements of public service companies taxable as personalty: RCW 84.20.010.

Electrical advisory board: RCW 19.28.065.

Franchise on county roads and bridges: Chapter 36.55 RCW.

Fraud in obtaining telephone or telegraph service: RCW 9.45.240.

Gas and oil pipelines: Chapter 81.88 RCW.

Generating electricity by steam: RCW 43.21.220 through 43.21.410.

Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts: RCW 87-.03.825 through 87.03.840.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Motor vehicle fuel tax exemption for urban transportation system: RCW 82.36.275.

Municipal utilities: Chapter 35.92 RCW.

Municipal utilities, sale or lease of: Chapter 35.94 RCW.

Municipal water and sewer facilities act: Chapter 35.91 RCW.

Nuclear, thermal power facilities, joint development by cities, public utility districts, electrical companies: Chapter 54.44 RCW.

Operating agencies: Chapter 43.52 RCW.

Party line telephone calls, emergencies: Chapter 70.85 RCW.

Power resources, state division of: Chapter 43.27A RCW.

Public utility districts: Title 54 RCW.

Public utility tax: Chapter 82.16 RCW.

State department of conservation: Chapter 43.27A RCW.

State power commission: Chapter 43.27A RCW.

Traffic control at work sites: RCW 47.36.200 through 47.36.230.

Underground utilities, records of location: Chapter 19.122 RCW.

Utility poles, unlawful to attach objects: RCW 70.54.090, 70.54.100.

Water resources, state division of: Chapter 43.27A RCW.

Chapter 80.01

UTILITIES AND TRANSPORTATION COMMISSION

Sections

- 80.01.010 Commission created—Appointment of members—Terms—Vacancies—Removal—Salary.
- 80.01.020 Commissioners, oath, bond, and qualifications—Persons excluded from office and employment.
- 80.01.030 Commission to employ secretary and other assistants—Secretary's duties—Deputies.
- 80.01.040 General powers and duties of commission.
- 80.01.050 Quorum—Hearings—Actions deemed those of the commission.
- 80.01.060 Administrative law judges—Powers.
- 80.01.070 Joint investigations, hearings, orders.
- 80.01.075 Authority to initiate, participate in federal administrative agency proceedings.
- 80.01.080 Public service revolving fund.
- 80.01.090 Proceedings public records—Seal—Report.
- 80.01.100 Duties of attorney general.
- 80.01.300 Certain provisions not to detract from commission powers, duties, and functions.

Collection agencies, retained by public bodies to collect debts: RCW 19.16.500.

License requirements, agency review and report to governor: RCW 19.02.120.

Solid waste collection districts in counties, commission findings necessary: RCW 36.58A.030.

80.01.010 Commission created—Appointment of members—Terms—Vacancies—Removal—

Salary. There is hereby created and established a state commission to be known and designated as the Washington utilities and transportation commission, and in this chapter referred to as the commission.

The commission shall be composed of three members appointed by the governor, with the consent of the senate. Not more than two members of said commission shall belong to the same political party.

The members of the first commission to be appointed after taking effect of this section shall be appointed for terms beginning April 1, 1951, and expiring as follows: One commissioner for the term expiring January 1, 1953; one commissioner for the term expiring January 1, 1955; one commissioner for the term expiring January 1, 1957. Each of the commissioners shall hold office until

his successor is appointed and qualified. Upon the expiration of the terms of the three commissioners first to be appointed as herein provided, each succeeding commissioner shall be appointed and hold office for the term of six years. One of such commissioners to be designated by the governor, shall, during the term of the appointing governor, be the chairman of the commission.

Each commissioner shall receive a salary as may be fixed by the governor in accordance with the provisions of RCW 43.03.040.

Any member of the commission may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review.

If the tribunal specified herein finds the charges of the governor to be true, the governor shall have the right to immediately remove the commissioner from office, to declare the position of the commissioner vacant, and appoint another commissioner to the position in accordance with the provisions of the law.

Any vacancy arising in the office of commissioner shall be filled by appointment by the governor, and an appointee selected to fill such vacancy shall hold office for the balance of the full term for which his predecessor on the commission was appointed.

If a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall present to the senate his nomination or nominations for the office to be filled. [1961 c 307 § 4; 1961 c 14 § 80.01.010. Prior: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 § 1; Rem. Supp. 1949 § 10964-115-1. Formerly RCW 43.53.010.]

80.01.020 Commissioners, oath, bond, and qualifications—Persons excluded from office and employment. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office, and furnish bond to the state in the sum of twenty thousand dollars conditioned for the faithful discharge of the duties of his office and for the proper accounting for all funds that may come into his possession by virtue of his office. Each commissioner shall be a qualified elector of this state and no person in the employ of or holding any official relation to any corporation or person, which corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed or hold the office of commissioner or be appointed or employed by the commission: *Provided*, That if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a

reasonable time divest himself of such ownership or interest, and failing to do so his office or employment shall become vacant. [1961 c 14 § 80.01.020. Prior: 1949 c 117 § 2; Rem. Supp. 1949 § 10964-115-2. Formerly RCW 43.53.020 and 43.53.030.]

80.01.030 Commission to employ secretary and other assistants—Secretary's duties—Deputies. The commission shall appoint and employ a secretary and such accounting, engineering, expert and clerical assistants, and such other qualified assistants as may be necessary to carry on the administrative work of the commission.

The secretary shall be the custodian of the commission's official seal, and shall keep full and accurate minutes of all transactions, proceedings and determinations of the commission and perform such other duties as may be required by the commission.

The commission may deputize one or more of its assistants to perform, in the name of the commission, such duties of the commission as it deems expedient. [1961 c 14 § 80.01.030. Prior: 1949 c 117 § 4; 1934 c 267 §§ 2, 3, 5 and 6; Rem. Supp. 1949 § 10964-115-4 and Rem. Supp. 1945 §§ 10459-2, 10459-3, 10459-5, 10459-6; prior: compare prior laws as follows: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 §§ 1, 3, 8; 1945 c 267; 1935 c 8 § 1; 1921 c 7 §§ 25, 26; 1911 c 117. Formerly RCW 43.53.040.]

80.01.040 General powers and duties of commission. The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed therefor by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the transportation by whatever means of persons or property within this state for compensation, and related activities; including, but not limited to, air transportation companies, auto transportation companies, express companies, freight and freight line companies, motor freight companies, motor transportation agents, private car companies, railway companies, sleeping car companies, steamboat companies, street railway companies, toll bridge companies, storage warehousemen, and wharfingers and warehousemen.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

(4) Make such rules and regulations as may be necessary to carry out its other powers and duties. [1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

80.01.050 Quorum—Hearings—Actions deemed those of the commission. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. Any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any examiner designated and authorized by the commission as provided in RCW 80.01.060. All investigations, inquiries and hearings of the commission, and all findings, orders or decisions, made by a commissioner, when approved and confirmed by the commission and filed in its office, shall be and be deemed to be the orders or decisions of the commission. [1961 c 14 § 80.01.050. Prior: 1949 c 117 § 6; Rem. Supp. 1949 § 10964-115-6. Formerly RCW 43.53.060.]

80.01.060 Administrative law judges—Powers. The commission shall have the power to request the appointment of administrative law judges under chapter 34.12 RCW when it deems such action necessary for its general administration. Such administrative law judges shall have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the commission may adopt. [1981 c 67 § 35; 1961 c 14 § 80.01.060. Prior: 1925 ex.s. c 164 § 1; RRS § 10779-1. Formerly RCW 43.53.070.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

80.01.070 Joint investigations, hearings, orders. The commission shall have full power to make joint or concurrent investigations, hold joint or concurrent hearings, and issue joint or concurrent orders in conjunction or concurrence with any official, board, or commission of any state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce or as an agency of the federal government or otherwise. When necessary the commission may hold such joint hearing or investigation outside the state. [1961 c 14 § 80.01.070. Prior: 1949 c 117 § 7; Rem. Supp. 1949 § 10964-115-7. Formerly RCW 43.53.080.]

80.01.075 Authority to initiate, participate in federal administrative agency proceedings. The commission shall have the authority as petitioner, intervenor or otherwise to initiate and/or participate in proceedings before federal administrative agencies in which there is at issue the authority, rates or practices for transportation or utility

services affecting the interests of the state of Washington, its businesses and general public, and to do all things necessary in its opinion to present to such federal administrative agencies all facts bearing upon such issues, and to similarly initiate and/or participate in any judicial proceedings relating thereto. [1967 ex.s. c 49 § 1.]

80.01.080 Public service revolving fund. The transportation revolving fund and the public utilities revolving fund are abolished as of April 1, 1949, and as of such date there is created in the state treasury a "Public Service Revolving Fund" to which shall be transferred all moneys which then remain on hand to the credit of the transportation revolving fund and the public utilities revolving fund, subject, however, to outstanding warrants and other obligations chargeable to appropriations made from such funds. From and after April 1, 1949, regulatory fees payable by all types of public service companies shall be deposited to the credit of the public service revolving fund. All expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund. [1961 c 14 § 80.01.080. Prior: 1949 c 117 § 11; Rem. Supp. 1949 § 10964-115-11. Formerly RCW 43.53.090.]

80.01.090 Proceedings public records—Seal—Report. All proceedings of the commission and all documents and records in its possession shall be public records, and it shall adopt and use an official seal. Subject to RCW 40.07.040, the commission shall make and submit to the governor and the legislature a biennial report containing a statement of the transactions and proceedings of its office, together with the information gathered by the commission and such other facts, suggestions, and recommendations as the governor may require or the legislature request. [1987 c 505 § 77; 1977 c 75 § 91; 1961 c 14 § 80.01.090. Prior: 1949 c 117 § 5; Rem. Supp. 1949 § 10964-115-5. Formerly RCW 43.53.100.]

80.01.100 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title or Title 81 RCW, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.01.100. Prior: 1911 c 117 § 5; RRS § 10341.]

80.01.300 Certain provisions not to detract from commission powers, duties, and functions. Nothing contained in the provisions of RCW 36.58A.010 through 36.58A.040 and 70.95.090 and this section shall detract

from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW. [1971 ex.s. c 293 § 7.]

Chapter 80.04

REGULATIONS—GENERAL

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80.04.520 Approval of lease of utility facilities.

80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity

for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: *Provided*, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where

the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.04 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: *And provided further*, That such measurement of customers or revenues shall include all portions of water companies having common ownership, regardless of location or corporate designation. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of social and health services.

The term "service" is used in this title in its broadest and most inclusive sense. [1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Severability—1979 ex.s. c 191: See RCW 82.35.900.

80.04.015 Conduct of business subject to regulation—Determination by commission. Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books, records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring

the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

In proceedings under this section, no person or corporation may be excused from testifying or from producing any information, book, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, information, book, document, or account required may tend to incriminate him or her or subject him or her to penalty or forfeiture specified in this title; but no person or corporation may be prosecuted, punished, or subjected to any penalty or forfeiture specified in this title for or on account of any account, transaction, matter, or thing concerning which he or she shall under oath have testified or produced documentary evidence in proceedings under this section: *Provided*, That no person so testifying may be exempt from prosecution or punishment for any perjury committed by him or her in such testimony: *Provided further*, That the exemption from prosecution in this section extends only to violations of this title. [1986 c 11 § 1.]

80.04.020 Procedure before commission and courts.

Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to

appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [1961 c 14 § 80.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

80.04.030 Number of witnesses may be limited. In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 80.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

80.04.040 Witness fees and mileage. Each witness who shall appear under subpoena shall receive for his attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [1961 c 14 § 80.04.040. Prior: 1955 c 79 § 1; 1911 c 117 § 76, part; RRS 10414, part.]

80.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [1961 c 14 § 80.04.050. Prior: 1911 c 117 § 76, part; RRS 10414, part.]

Powers of each commissioner to compel attendance of witnesses: RCW 80.04.020.

80.04.060 Depositions—Service of process. The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 80.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

80.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public

service company in relation thereto, and with reference to the affairs of such company: *Provided*, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [1961 c 14 § 80.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

80.04.075 Manner of serving papers. All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 80.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 80.04.370.]

80.04.080 Annual reports. Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate business, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the company each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning charges, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia within three months after the close of the designated

year for which such report is made, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires. [1961 c 14 § 80.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

80.04.090 Forms of records to be prescribed. The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 80.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

80.04.095 Protection of records containing commercial information. Records, subject to chapter 42.17 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.17 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings. [1987 c 107 § 1.]

80.04.100 Production of out-of-state books and records. The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 80.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

80.04.110 Complaints—Hearings. Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: *Provided*, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service: *Provided, further*, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be

entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: *Provided*, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. [1985 c 450 § 11; 1961 c 14 § 80.04.110. Prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

80.04.120 Hearings, order, record. At the time fixed for the hearing mentioned in RCW 80.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [1961 c 14 § 80.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

80.04.130 Suspension of tariff changes—Mandatory measured telecommunications service—Lifeline service. (1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any

rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing or approve, prior to June 1, 1990, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of lifeline service is a major policy change in available telecommunications service. The implementation of lifeline service will aid in achieving the stated goal of universal telephone service. [1987 c 333 § 1; 1987 c 229 § 2. Prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

Reviser's note: This section was amended by 1987 c 229 § 2 and by 1987 c 333 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 333: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 333 § 2.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

80.04.140 Order requiring joint action. Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 80.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

80.04.150 Remunerative rates cannot be changed without approval. Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, rental or charge which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, rental or charge without first obtaining the consent of the commission authorizing such change to be made. [1961 c 14 § 80.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

80.04.160 Rules and regulations. The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations shall be promulgated and issued by the commission on its own motion, and shall be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may

justify. The commission shall have, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings: *Provided*, No person desiring to be present at such hearing shall be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [1961 c 14 § 80.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

80.04.170 Review of orders. Any complainant or any public service company affected by any findings or order of the commission, and deeming such findings or order to be contrary to law, may, within thirty days after the service of the findings or order upon him or it, apply to the superior court of Thurston county for a writ of review, for the purpose of having the reasonableness and lawfulness of such findings or order inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected further time be allowed by the court, and shall direct the commission to certify its record in the case to the court. Such cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside or remanding for further action the findings or order of the commission under review. The reasonable cost of preparing the transcript of testimony taken before the commission shall be assessable as part of the statutory court costs, and the amount thereof, if collected by the commission, shall be deposited in the public service revolving fund. In case such findings or order be set aside, or reversed and remanded, the court shall make specific findings based upon evidence in the record indicating clearly all respects in which the commission's findings or order are erroneous. [1961 c 14 § 80.04.170. Prior: 1937 c 169 § 3; 1911 c 117 § 86; RRS § 10428.]

80.04.180 Supersedeas. The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

No order so restraining or suspending an order of the commission relating to rates, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing, and if a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage.

In case the order of the commission under review is superseded by the court, it shall require a bond, with

good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transmission or service any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporations would have been compelled to pay if the order of the commission had not been suspended.

The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem proper. [1961 c 14 § 80.04.180. Prior: 1933 c 165 § 6; prior: 1931 c 119 § 2; 1911 c 117 § 87; RRS § 10429.]

80.04.190 Appeal to supreme court or court of appeals. The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, prosecute an appeal to the supreme court or the court of appeals of the state of Washington as in other cases. [1971 ex.s. c 107 § 4; 1961 c 14 § 80.04.190. Prior: 1911 c 117 § 88; RRS § 10430.]

Rules of court: Cf. RAP 2.2.

80.04.200 Rehearing before commission. Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: *Provided*, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 80.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

80.04.210 Commission may change orders. The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 80.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

80.04.220 Reparations. When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount. [1961 c 14 § 80.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

80.04.230 Overcharges, refund of. When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 80.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

80.04.240 Action in court on reparations and overcharges. If the public service company does not comply with the order of the commission for the payment of the overcharge within the time limited in such order, suit may be instituted in any superior court where service may be had upon the said company to recover the amount of the overcharge with interest. It shall be the duty of the commission to certify its record in the case, including all exhibits, to the court. Such record shall be filed with the clerk of said court within thirty days after such suit shall have been started and said suit shall be heard on the evidence and exhibits introduced before the commission and certified to by it. If the complainant shall prevail in such action, the superior court shall enter judgment for the amount of the overcharge with interest and shall allow complainant a reasonable attorney's fee, and the cost of preparing and certifying said record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public

service revolving fund, said sums to be fixed and collected as a part of the costs of the suit. If the order of the commission shall be found to be contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive. The court may in its discretion remand any cause which is reversed by it to the commission for further action. Appeals to the supreme court shall lie as in other civil cases. All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided. [1961 c 14 § 80.04.240. Prior: 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

80.04.250 Valuation of public service property. The commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title.

The commission shall have the power to make revaluations of the property of any public service company from time to time.

The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice shall be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section. [1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

80.04.260 Summary proceedings. Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for

Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for the appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. An appeal may be taken to the supreme court or the court of appeals from such final judgment in the same manner and with the same effect as appeals from judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of appeal, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1971 c 81 § 140; 1961 c 14 § 80.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

80.04.270 Merchandise accounts to be kept separate.

Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. For purposes of this section, the providing of competitive telephone service, as defined in RCW 82.04.065, shall not constitute the sale of merchandise, appliances, or equipment, unless the commission determines that it would be in the public interest to hold otherwise. [1983 2nd ex.s. c 3 § 40; 1981 c 144 § 5; 1961 c 14 § 80.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

Construction—Severability—Effective dates—1983 2nd ex.s c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

80.04.280 Purchase and sale of stock by employees.

No public service company shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; nor shall any public service company by any means or device require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any public service company require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [1961 c 14 § 80.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

80.04.290 Sales of stock to employees and customers.

A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and customers any increase of its capital stock, or part thereof, without first offering it to existing stockholders: *Provided*, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event, a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 80.04.290. Prior: 1955 c 79 § 2; 1923 c 110 § 1; RRS § 10344-1.]

80.04.300 Budgets to be filed by companies—

Supplementary budgets. The commission may regulate, restrict, and control the budgets of expenditures of public service companies. Each company shall prepare a budget showing the amount of money which, in its judgment, will be needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [1961 c 14 § 80.04.300. Prior: 1959 c 248 § 11; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

80.04.310 Commission's control over expenditures. The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commission may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within ninety days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereunder are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1987 c 38 § 1; 1961 c 14 § 80.04.310. Prior: 1959 c 248 § 12; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

80.04.320 Budget rules and regulations. The commission may prescribe the necessary rules and regulations to place RCW 80.04.300 through 80.04.330 in operation. It may, by general order, exempt in whole or in part from the operation thereof companies whose gross operating revenues are less than twenty-five thousand dollars a year. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable any portion of any original or supplementary budget relating to proposed capital expenditures. [1961 c 14 § 80.04.320. Prior: 1959 c 248 § 13; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

80.04.330 Effect of unauthorized expenditure—Emergencies. Any public service company may make or contract for any rejected item of expenditure, but in such case the same shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: *Provided*, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure therefor free from the operation of RCW 80.04.300 through 80.04.330.

Any finding and order entered by the commission shall be in effect until vacated and set aside in proper proceedings for review thereof. [1961 c 14 § 80.04.330.

Prior: 1959 c 248 § 14; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

80.04.350 Depreciation and retirement accounts. The commission shall have power after hearing to require any or all public service companies to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission shall have and exercise like power and authority over all other reserve accounts of public service companies. [1961 c 14 § 80.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

80.04.360 Excessive earnings to reserve fund. If any public service company earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings shall have been invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [1961 c 14 § 80.04.360. Prior: 1959 c 285 § 2; 1933 c 165 § 14; RRS § 10458-8.]

80.04.380 Penalties—Violations by public service companies. Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 80.04.380. Prior: 1911 c 117 § 94; RRS § 10443. Formerly RCW 80.04.380, part. FORMER PART OF SECTION: 1911 c 117 § 96 now in RCW 80.04.387.]

80.04.385 Penalties—Violations by officers, agents, and employees of public service companies. Every

officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 80.04.390, part.]

80.04.387 Penalties—Violations by other corporations. Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 80.04.400. [1961 c 14 § 80.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 80.04.380, part.]

80.04.390 Penalties—Violations by persons. Every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, shall violate any provision of this title, or fail to observe, obey or comply with any order made by the commission under this title, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this title, or in its failure to obey, observe or comply with any such order, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.390. Prior: 1911 c 117 § 97; RRS § 10446. FORMER PART OF SECTION: 1911 c 117 § 95 now in RCW 80.04.385.]

80.04.400 Actions to recover penalties—Disposition of fines, penalties, and forfeitures. Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 238; 1969 ex.s. c 199 § 35; 1961 c 14 § 80.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

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

80.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees thereof. In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1963 c 59 § 2.]

80.04.410 Orders and rules conclusive. In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 80.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

80.04.420 Intervention by commission where order or rule is involved. In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial,

the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 80.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

80.04.430 Findings of commission prima facie correct. Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 80.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

80.04.440 Companies liable for damages. In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [1961 c 14 § 80.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

80.04.450 Certified copies of orders, rules, etc.—Evidentiary effect. Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 80.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

80.04.460 Investigation of accidents. Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to

any person occurring in its plant or system, in such manner as the commission may prescribe. Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice.

The commission may investigate any accident resulting in death or injury to any person occurring in connection with the plant or system of any public service company. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and they may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [1961 c 14 § 80.04.460. Prior: 1953 c 104 § 2; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

80.04.470 Commission to enforce public service laws—Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his presence any provision of this title, or any rule or regulation adopted by the commission: *Provided*, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated such person shall be a peace officer and a police officer for the purposes herein mentioned. [1961 c 173 § 1; 1961 c 14 § 80.04.470. Prior: 1911 c 117 § 101; RRS § 10450.]

80.04.480 Rights of action not released—Penalties cumulative. This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other. [1961 c 14 § 80.04.480. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 80.04.480 and 80.04.490.]

80.04.500 Application to municipal utilities. Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations

made, furnished, used, supplied or in force affecting any telecommunications line, gas plant, electrical plant or water system owned and operated by any city or town, or to make or enforce any order relating to the safety of any telecommunications line, electrical plant or water system owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. [1985 c 450 § 13; 1969 ex.s. c 210 § 1; 1961 c 14 § 80.04.500. Prior: 1911 c 117 § 105; RRS § 10454.]

Severability—Legislative review—1985 c 450: See RCW 80.36-.900 and 80.36.901.

80.04.510 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.04.510. Prior: 1911 c 117 § 5; RRS § 10341.]

80.04.520 Approval of lease of utility facilities. In addition to any other powers and duties under this chapter, the commission shall have the authority to authorize and approve the terms of any lease of utility facilities by a public service company, as lessee, if the public service company makes proper application to the commission certifying that such authorization or approval is necessary or appropriate to exempt any owner of the facilities from being a public utility company under the federal Public Utility Holding Company Act of 1935. [1979 ex.s. c 125 § 1.]

Chapter 80.08 SECURITIES

Sections

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80.08.010 Definition. The term "public service company", as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.08.010. Prior: 1959 c 248 § 2; 1953 c 95 § 4; 1933 c 151 § 1, part; RRS § 10439-1, part.]

80.08.020 Control vested in state. The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 80.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

80.08.030 Authority to issue. A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than twelve months after the date thereof, for the following purposes only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 80.08.030. Prior: 1953 c 95 § 5; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

80.08.040 Application for authority—Hearing—Joint action. Except as provided in RCW 80.08.045, application for authorization to issue such stocks and stock certificates or other evidence of interest or ownership, and bonds, notes or other evidences of indebtedness shall be made to the commission stating the amount, character, terms and purpose of each proposed issue thereof, and stating such other pertinent details as the commission may require.

To enable it to determine whether it will issue such order, the commission may hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents and contracts, and require the filing of such data as it may deem of assistance. The commission may by its order grant permission for the issuance of such stocks or stock

certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary.

If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public service company within such other state, then the commission shall have the power to agree with such commission or other agency or agencies of such other state on the issuance of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes or other evidences of indebtedness by a public service company owning or operating a public utility both in such state and in this state, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue a joint certificate of such approval: *Provided, however,* That no such joint approval shall be required in order to express the consent to and approval of such issue by the state of Washington if said issue is separately approved by the commission.

The public service company making the application may have the decision or order of the commission reviewed in the courts in the same manner and by the same procedure as any other order or decision of the commission, when the public service company shall deem such decision or order to be in any respect or manner improper, unjust or unreasonable. [1987 c 106 § 1; 1961 c 14 § 80.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

80.08.045 Conditions, terms, and parameters of issuance. Notwithstanding the provisions of RCW 80.08.040, any order granting a public service company permission for the issuance of securities may be based on reasonable estimates of the final terms of the issuance and may allow the public service company to complete the transaction if the final terms are within a range of conditions, terms, and parameters established by the commission. The range of conditions, terms, and parameters may include such things as a range of time in which the securities may be issued, a range in the maximum amount of the issuance, a range in the amount of the issuance costs, a range in the amount of the interest rate to be paid, and ranges in such other terms and conditions as the commission may deem proper. [1987 c 106 § 2.]

80.08.050 Use of proceeds limited. No public service company shall, without the consent of the commission, apply the issue of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order,

or a modification thereof. [1961 c 14 § 80.08.050. Prior: 1933 c 151 § 5; RRS § 10439-5.]

80.08.060 Short term notes excepted. A public service company may issue notes, except demand notes, for proper purposes and not in violation of any provision of this chapter, or any other law, payable at periods of not more than twelve months after the date of issuance, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness, without the consent of the commission: *Provided,* That the consent of the commission shall be required for the issuance of any note or notes issued as part of a single borrowing transaction of one million dollars or more payable at periods of less than twelve months after date of issuance by any public service company which is subject to the Federal Power Act unless such note or notes aggregates together with all other then outstanding notes and drafts of a maturity of twelve months or less on which such public service company is primarily or secondarily liable not more than five percent of the par value of other securities of such company then outstanding, computed, in the case of securities having no par value, on the basis of the fair market value as of the date of issue. [1961 c 14 § 80.08.060. Prior: 1959 c 248 § 20; prior: 1937 c 30 § 2, part; 1933 c 151 § 6, part; RRS § 10439-6, part.]

80.08.080 Capitalization of franchises or merger contracts prohibited. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 80.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

80.08.090 Accounting for disposition of proceeds. The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 80.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

80.08.100 Unauthorized and nonconforming issues void. All stock and every stock certificate or other evidence of interest or ownership, and every bond, note or

other evidence of indebtedness, of a public service company, issued without an order of the commission authorizing the same then in effect shall be void, and likewise all stock and every stock certificate or other evidence of interest or ownership, and every bond, note or other evidence of indebtedness, of a public service company, issued with the authorization of the commission, but not conforming in substance in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. [1961 c 14 § 80.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

80.08.105 Unauthorized and nonconforming issues void—Issues after effective date of chapter 151, Laws of 1933 based upon prior corporate authority. All stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness issued by any public service company after chapter 151, Laws of 1933 takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of chapter 151, Laws of 1933, shall be void, unless an order of the commission authorizing the issuance of such stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness shall have been obtained from the commission prior to such issue; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

For the purposes of this section "commission" shall mean the utilities and transportation commission or such body as shall have succeeded to the powers and duties thereof. [1983 c 4 § 10; 1961 c 14 § 80.08.105. Prior: 1933 c 151 § 10; RRS § 10439-10.]

80.08.110 Penalty against companies. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the same, or

contrary to the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the commission's order, as herein provided or to any purpose specified in the commission's order in excess of the amount in said order authorized for such purpose shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation of any such order, rules, direction, demand or requirement of the commission, or of any provision of this chapter, shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission or failure of such public service company. [1961 c 14 § 80.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

80.08.120 Penalty against individuals. Every officer, agent or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the same, or contrary to the provisions of this chapter, or who, in any proceedings before the commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation which said statement or representation so made, filed or caused to be filed may tend in any way to influence the commission to make an order authorizing the issuance of any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order, or who, with knowledge that any false statement or representation was made to the commission in any proceedings tending in any way to influence the commission to make such order, issues or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter, negotiates, or causes the same to be negotiated, shall be guilty

of a gross misdemeanor. [1961 c 14 § 80.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

80.08.130 Permit to assume liability as guarantor, etc. No public service company shall henceforth assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, without having first secured from the commission an order authorizing it so to do. Every such assumption made other than in accordance with the order of the commission authorizing the same shall be void. [1961 c 14 § 80.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

80.08.140 State not obligated. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter. [1961 c 14 § 80.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

Chapter 80.12

TRANSFERS OF PROPERTY

Sections

80.12.010	Definition.
80.12.020	Order required to sell, merge, etc.
80.12.030	Disposal without authorization void.
80.12.040	Authority required to acquire property or securities of utility.
80.12.050	Rules and regulations.
80.12.060	Penalty.

80.12.010 Definition. The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.12.010. Prior: 1953 c 95 § 6; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

80.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: *Provided*, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town. [1981 c

117 § 1; 1961 c 14 § 80.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

80.12.030 Disposal without authorization void. Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. [1961 c 14 § 80.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

80.12.040 Authority required to acquire property or securities of utility. No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 80.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

80.12.050 Rules and regulations. The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 80.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

80.12.060 Penalty. The provisions of RCW 80.04.380 and 80.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 80.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

Chapter 80.16

AFFILIATED INTERESTS

Sections

80.16.010	Definitions.
80.16.020	Dealings with affiliated interests must be approved.
80.16.030	Payments to affiliated interest disallowed if not reasonable.
80.16.040	Satisfactory proof, what constitutes.
80.16.050	Commission's control is continuing.
80.16.060	Summary order on nonapproved payments.
80.16.070	Summary order on payments after disallowance.
80.16.080	Court action to enforce orders.
80.16.090	Review of orders.

80.16.010 Definitions. As used in this chapter the term "public service company" shall include every corporation engaged in business as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

As used in this chapter, the term "affiliated interest" means:

Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [1961 c 14 § 80.16.010. Prior: 1953 c 95 § 7; 1933 c 152 § 1, part; RRS § 10440-1, part.]

80.16.020 Dealings with affiliated interests must be approved. No contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to such affiliated interests, shall be valid or effective unless and until such contract or arrangement shall have received the approval of the commission. It shall be the duty of every public service company to file with the commission, a verified copy or a verified summary of any such unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to March 18, 1933 and in force and effect at that time. The commission shall approve such contract or arrangement hereafter made or entered into only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest; otherwise the contract or arrangement shall not be approved. The commission shall not be required to approve any such contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein. [1961 c 14

§ 80.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 2; Rem. Supp. 1941 § 10440-2.]

80.16.030 Payments to affiliated interest disallowed if not reasonable. In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of such public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with such affiliated interest unless such public service company shall establish the reasonableness of such payment or compensation. In such proceeding the commission shall disallow such payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such proceeding any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service above described. [1961 c 14 § 80.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

80.16.040 Satisfactory proof, what constitutes. No proof shall be satisfactory, within the meaning of RCW 80.16.010 through 80.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: *Provided, however,* That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 80.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

80.16.050 Commission's control is continuing. The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest. [1961 c 14 § 80.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

80.16.060 Summary order on nonapproved payments. Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having received the commission's approval, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the commission. [1961 c 14 § 80.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

80.16.070 Summary order on payments after disallowance. Whenever the commission shall find upon investigation that any public service company is making payments to an affiliated interest, although such payments have been disallowed and disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company from treating such payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the commission. [1961 c 14 § 80.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

80.16.080 Court action to enforce orders. The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 80.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

80.16.090 Review of orders. Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 80.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

Chapter 80.20

INVESTIGATION OF PUBLIC SERVICE COMPANIES

Sections

80.20.010	Definition.
80.20.020	Cost of investigation may be assessed against company.
80.20.030	Interest on unpaid assessment—Action to collect.
80.20.040	Commission's determination of necessity as evidence.
80.20.050	Order of commission not subject to review.
80.20.060	Limitation on frequency of investigation.

80.20.010 Definition. As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the commission under the

provisions of this title. [1961 c 14 § 80.20.010. Prior: 1953 c 95 § 8; 1939 c 203 § 1; RRS § 10458-6.]

80.20.020 Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 80.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

80.20.030 Interest on unpaid assessment—Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 80.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

80.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 80.20.020 through 80.20.060 or in any proceedings determinative

of such bills shall be prima facie evidence of such facts. [1961 c 14 § 80.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

80.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 80.20.020 through 80.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 80.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

80.20.060 Limitation on frequency of investigation. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in any other circumstances and conditions affecting rates and services: *Provided*, That the provisions of this section shall not be a limitation on the frequency of assessment of costs of investigation where such investigation results from a tariff filing or tariff filings by a public service company to increase rates. [1971 ex.s. c 143 § 8; 1961 c 14 § 80.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

Chapter 80.24 REGULATORY FEES

Sections

80.24.010	Companies to file reports of gross revenue and pay fees.
80.24.020	Fees to approximate reasonable cost of regulation.
80.24.030	Intent of legislature—Regulatory cost records to be kept by commission.
80.24.040	Disposition of fees.
80.24.050	Penalty for failure to pay fees—Disposition of fines and penalties.

Assessment of public utilities for property tax purposes: Chapter 84.12 RCW.

Corporations, annual license fees for public service companies: RCW 23A.40.060, 23A.40.080.

Easements of public service companies taxable as personalty: RCW 84.20.010.

Public utility tax: Chapter 82.16 RCW.

80.24.010 Companies to file reports of gross revenue and pay fees. Every public service company subject to regulation by the commission shall, on or before the first day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: *Provided*, That the fee shall in no case be less than one dollar.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in. [1985 c 450 § 14; 1961 c 14 § 80.24.010. Prior: 1955 c 125 § 2; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Severability—Legislative review—1985 c 450: See RCW 80.36-.900 and 80.36.901.

80.24.020 Fees to approximate reasonable cost of regulation. In fixing the percentage rates of gross operating revenue to be paid in any year, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the several classes of companies shall be approximately the same as the reasonable cost of supervising and regulating such classes of companies. [1961 c 14 § 80.24.020. Prior: 1955 c 125 § 3; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part.]

80.24.030 Intent of legislature—Regulatory cost records to be kept by commission. It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 80.24.030. Prior: 1937 c 158 § 7; RRS § 10417-5.]

80.24.040 Disposition of fees. All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by the state treasurer deposited to the public service revolving fund: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 239; 1969 ex.s. c 199 § 36; 1961 c 14 § 80.24.040. Prior: 1937 c 158 § 6; RRS § 10417-4.]

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

80.24.050 Penalty for failure to pay fees—Disposition of fines and penalties. Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 240; 1979 ex.s. c 198 § 1; 1969 ex.s. c 199 § 37; 1961 c 14 § 80.24.050. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

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

Chapter 80.28

GAS, ELECTRICAL, AND WATER COMPANIES

Sections	
80.28.010	Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating.
80.28.011	Reports to legislature—1986 c 245—Review of policies on involuntary termination of gas or electric service—Expiration of section.
80.28.020	Commission to fix just, reasonable, and compensatory rates.
80.28.024	Legislative finding.
80.28.025	Encouragement of energy cogeneration, conservation, and production from renewable resources.
80.28.030	Commission may order improved quality of commodity.
80.28.040	Commission may order improved service.
80.28.050	Tariff schedules to be filed with commission—Public schedules.
80.28.060	Tariff changes—Statutory notice—Exception.
80.28.070	Sliding scale of charges permitted.
80.28.080	Published rates to be charged—Exceptions.
80.28.090	Unreasonable preferences prohibited.
80.28.100	Rate discrimination prohibited—Exception.
80.28.110	Service to be furnished on reasonable notice.
80.28.120	Effect on existing contracts.
80.28.130	Repairs, improvements, changes, additions, or extensions may be directed.
80.28.140	Inspection of gas and water meters.
80.28.150	Inspection of electric meters.
80.28.160	Testing apparatus to be furnished.
80.28.170	Testing at consumer's request.
80.28.180	Rules and regulations.
80.28.190	Gas companies—Certificate—Violations—Commission powers—Penalty—Fees.
80.28.200	Gas companies—Refunds of charges.
80.28.210	Safety rules—Pipeline transporters—Penalty.
80.28.212	Safety rules—Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder—Maximum amount—Compromise—Disposition of penalty.
80.28.220	Gas companies—Right of eminent domain—Purposes.
80.28.230	Gas companies—Use for purpose acquired exclusive—Disposition of property.
80.28.240	Recovery of damages by utility company for tampering, unauthorized connections, diversion of services.
80.28.250	Water companies—Fire hydrants.

Construction projects in state waters: Chapter 75.20 RCW.

Fishways at dams: RCW 77.16.210.

Franchises on state highways: Chapter 47.44 RCW.

Reduced utility rates for low-income senior citizens: RCW 74.38.070.

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

(4) Until June 30, 1990:

(a) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(i) Notifies the utility of the inability to pay the bill, including a security deposit. This notice shall be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances;

(ii) Provides self-certification of household income for the prior twelve months to a grantee of the department of community development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(iii) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(iv) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(v) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(vi) Agrees to pay the moneys owed even if he or she moves.

(b) The utility shall:

(i) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(ii) Assist the customer in fulfilling the requirements under this section;

(iii) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area; and

(iv) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected.

(c) A payment plan implemented under this section is consistent with RCW 80.28.080.

(5) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(6) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(7) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010. Prior: 1911 c 117 § 26; RRS § 10362.]

80.28.011 Reports to legislature—1986 c 245—
Review of policies on involuntary termination of gas or electric service—Expiration of section. Until 1990, the Washington utilities and transportation commission shall report annually to the legislature for utilities subject to its jurisdiction: (1) The extent to which chapter 245, Laws of 1986 benefits low income persons, and (2) the costs and benefits to other customers. The commission shall also review its policies and the policies of gas and electric utilities under its jurisdiction on involuntary termination of gas or electric utility service, discontinuance of service, and responsibility for delinquent accounts, for

all residential customers and undertake good faith efforts to adopt policies which apply to all residential customers in a similar fashion to minimize uncollectible customer billings and to encourage customer payments of prior service obligations in a manner consistent with applicable state and federal law. This review shall be completed and a report on the review supplied to the energy and utilities committees of the legislature by January 1, 1987.

This section shall expire June 30, 1990. [1986 c 245 § 6; 1984 c 251 § 7.]

Reviser's note: For codification of 1986 c 245, see note following RCW 35.21.301.

80.28.020 Commission to fix just, reasonable, and compensatory rates. Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. [1961 c 14 § 80.28.020. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

80.28.024 Legislative finding. The legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private energy utilities. The legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging efficient energy use and a reliable supply of energy based upon renewable energy resources. [1980 c 149 § 1.]

80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources. In establishing rates for each gas and electric company regulated by this chapter, the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration as defined in RCW 82.35-.020, measures which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable resources, such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood waste, municipal wastes, agricultural products and wastes, and end-use waste heat. These policies shall include but are not limited to allowing a return on

investment in measures to improve the efficiency of energy end use, cogeneration, or projects which produce or generate energy from renewable resources which return is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investment. Measures or projects encouraged under this section are those for which construction or installation is begun after June 12, 1980, and before January 1, 1990, and which, at the time they are placed in the rate base, are reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric company could acquire to meet energy demand in the same time period. The rate of return increment shall be allowed for a period not to exceed thirty years after the measure or project is first placed in the rate base. [1980 c 149 § 2.]

Public utility tax exemptions relating to energy conservation and production from renewable resources: RCW 82.16.055.

80.28.030 Commission may order improved quality of commodity. Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, volume and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable. [1961 c 14 § 80.28.030. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

80.28.040 Commission may order improved service. Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule. [1961 c 14 § 80.28.040. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

80.28.050 Tariff schedules to be filed with commission—Public schedules. Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection

schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company. [1961 c 14 § 80.28.050. Prior: 1911 c 117 § 27; RRS § 10363.]

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

80.28.060 Tariff changes—Statutory notice—Exception. Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission. [1961 c 14 § 80.28.060. Prior: 1911 c 117 § 28; RRS § 10364.]

80.28.070 Sliding scale of charges permitted. Nothing in this chapter shall be taken to prohibit a gas company, electrical company or water company from establishing a sliding scale of charges, whereby a greater charge is made per unit for a lesser than a greater quantity for gas, electricity or water, or any service rendered or to be rendered. [1961 c 14 § 80.28.070. Prior: 1911 c 117 § 32; RRS § 10368.]

80.28.080 Published rates to be charged—Exceptions. No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule

filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: *Provided*, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: *Provided further*, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: *And provided further*, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances. [1985 c 427 § 2; 1973 1st ex.s. c 154 § 116; 1961 c 14 § 80.28.080. Prior: 1911 c 117 § 29; RRS § 10365.]

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

80.28.090 Unreasonable preferences prohibited. No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1961 c 14 § 80.28.090. Prior: 1911 c 117 § 30; RRS § 10366.]

80.28.100 Rate discrimination prohibited—**Exception.** No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto

under the same or substantially similar circumstances or conditions. [1961 c 14 § 80.28.100. Prior: 1911 c 117 § 31; RRS § 10367.]

Reduced utility rates for low-income senior citizens: RCW 74.38.070.

80.28.110 Service to be furnished on reasonable notice. Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded. [1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

80.28.120 Effect on existing contracts. Every gas, water or electrical company owning, operating or managing a plant or system for the distribution and sale of gas, water or electricity to the public for hire shall be and be held to be a public service company as to such plant or system and as to all gas, water or electricity distributed or furnished therefrom, whether such gas, water or electricity be sold wholesale or retail or be distributed wholly to the general public or in part as surplus gas, water or electricity to manufacturing or industrial concerns or to other public service companies or municipalities for redistribution. Nothing in this title shall be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the use of its lines, equipment or service under any contract or contracts in force on June 7, 1911, at the rates fixed in such contract or contracts: *Provided*, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the company party thereto and thereupon such contract or contracts shall be terminated by such company as and when directed by such order. [1961 c 14 § 80.28.120. Prior: 1933 c 165 § 1; 1911 c 117 § 34; RRS § 10370.]

80.28.130 Repairs, improvements, changes, additions, or extensions may be directed. Whenever the commission shall find, after hearing had upon its own motion or upon complaint, that repairs or improvements, to, or changes in, any gas plant, electrical plant or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions or extensions of such gas plant, electrical plant or water system be made. [1961 c 14 § 80.28.130. Prior: 1911 c 117 § 70; RRS § 10406.]

80.28.140 Inspection of gas and water meters. The commission may appoint inspectors of gas and water meters whose duty it shall be when required by the

commission to inspect, examine, prove and ascertain the accuracy of any and all gas and water meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power, or the quantity of water furnished for any purpose by any public service company to or for the use of any person or corporation, and when found to be or made to be correct such inspectors shall seal all such meters and each of them with some suitable device to be prescribed by the commission.

No public service company shall thereafter furnish, set or put in use any gas or water meter which shall not have been inspected, proved and sealed by an inspector of the commission under such rules and regulations as the commission may prescribe. [1961 c 14 § 80.28.140. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

80.28.150 Inspection of electric meters. The commission may appoint inspectors of electric meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any public service company to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device to be prescribed by the commission. No public service company shall furnish, set or put in use any electric meters the type of which shall not have been approved by the commission. [1961 c 14 § 80.28.150. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

80.28.160 Testing apparatus to be furnished. Every gas company, electrical company and water company shall prepare and maintain such suitable premises, apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas, electric or water meters furnished for use by it by which apparatus every meter may be tested. [1961 c 14 § 80.28.160. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

80.28.170 Testing at consumer's request. If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested, and if the same, on being so tested, shall be found to be more than four percent if an electric meter, or more than two percent if a gas meter, or more than two percent if a water meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the gas company, electrical company or water company, and if the same, on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this section, the expense of such inspection and test shall be borne by the consumer. [1961 c 14 § 80.28.170. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

80.28.180 Rules and regulations. The commission shall prescribe such rules and regulations to carry into effect the provisions of RCW 80.28.140 through 80.28.170 as it may deem necessary, and shall fix the uniform and reasonable charges for the inspection and testing of meters upon complaint. [1961 c 14 § 80.28.180. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

80.28.190 Gas companies—Certificate—Violations—Commission powers—Penalty—Fees. No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder wilfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply

with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor and punishable as such.

Neither this section, RCW 80.28.200, 80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars. [1971 c 81 § 141; 1961 c 14 § 80.28.190. Prior: 1955 c 316 § 4.]

80.28.200 Gas companies—Refunds of charges. Whenever any gas company whose rates are subject to the jurisdiction of the commission shall receive any refund of amounts charged and collected from it on account of natural gas purchased by it, by reason of any reduction of rates or disallowance of an increase in rates of the seller of such natural gas pursuant to an order of the federal power commission, whether such refund shall be directed by the federal power commission or by any court upon review of such an order or shall otherwise accrue to such company, the commission shall have power after a hearing, upon its own motion, upon complaint, or upon the application of such company, to determine whether or not such refund should be passed on, in whole or in part, to the consumers of such company and to order such company to pass such refund on to its consumers, in the manner and to the extent determined just and reasonable by the commission. [1961 c 14 § 80.28.200. Prior: 1955 c 316 § 5.]

80.28.210 Safety rules—Pipeline transporters—Penalty. Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28 RCW, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient. The commission shall have the authority to prescribe rules and regulations to effectuate the purpose of this enactment. Every such person and every such officer, agent and employee of a corporation who, as an individual or as an officer or agent of such corporation, violates or fails to comply with, or who procures, aids, or abets another, or his company, in the violation of, or

noncompliance with, any provision of this section or any order, rule or requirement of the commission hereunder, shall be guilty of a gross misdemeanor. [1969 ex.s. c 210 § 2; 1961 c 14 § 80.28.210. Prior: 1955 c 316 § 6.]

80.28.212 Safety rules—Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder—Maximum amount—Compromise—Disposition of penalty. Any gas company which violates any provision of RCW 80.28.210 as now exists or is later amended or of any regulation issued thereunder, shall be subject to a civil penalty to be directly assessed by the commission, such penalty not to exceed one thousand dollars for each violation for each day that the violation persists, but the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Any civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon and compromised, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the gas company charged in attempting to achieve compliance after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon and compromised, may be recovered in a civil action in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions for recovery the procedure and rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1969 ex.s. c 210 § 3.]

80.28.220 Gas companies—Right of eminent domain—Purposes. Every corporation having for one of its principal purposes the transmission, distribution, sale, or furnishing of natural gas or other type gas for light, heat, or power and holding and owning a certificate of public convenience and necessity from the utilities and transportation commission authorizing the operation of a gas plant, may appropriate, by condemnation, lands and property and interests therein, for the transmission, distribution, sale, or furnishing of such natural gas or other type gas through gas mains or pipelines under the provisions of chapter 8.20 RCW. [1961 c 14 § 80.28.220. Prior: 1957 c 191 § 1.]

80.28.230 Gas companies—Use for purpose acquired exclusive—Disposition of property. Any property or interest acquired as provided in RCW 80.28.220 shall be used exclusively for the purposes for which it was acquired: *Provided, however,* That if any such property be sold or otherwise disposed of by said corporations, such sale or disposition shall be by public sale or disposition and advertised in the manner of public sales in the county where such property is located. [1961 c 14 § 80.28.230. Prior: 1957 c 191 § 2.]

80.28.240 Recovery of damages by utility company for tampering, unauthorized connections, diversion of

services. (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

(4) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

(5) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation. [1985 c 427 § 1.]

Reviser's note: Subsection (3) of the above section was vetoed by the governor.

80.28.250 Water companies—Fire hydrants. A city, town or county may, by ordinance or resolution, require a water company to maintain fire hydrants in

the area served by the water company. The utilities and transportation commission has no authority to waive this obligation. [1986 c 119 § 1.]

Chapter 80.32

ELECTRIC FRANCHISES AND RIGHTS OF WAY

Sections

80.32.010	Cities and counties may grant franchises—Procedure—Liability to restore road for travel.
80.32.040	Grant of franchise subject to referendum.
80.32.050	Sale or lease of plant and franchises.
80.32.060	Eminent domain.
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80.32.090	Limitation on use of electricity.
80.32.100	Remedy for violations.

Franchises on state highways: Chapter 47.44 RCW.

80.32.010 Cities and counties may grant franchises—Procedure—Liability to restore road for travel. The legislative authority of the city or town having control of any public street or road, or, where the street or road is not within the limits of any incorporated city or town, then the county legislative authority of the county wherein the road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting this authority the legislative authority of the city or town, or the county legislative authority, as the case may be, may prescribe the terms and conditions on which the transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across the road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: *Provided*, That on application being made to the county legislative authority for such authority, the county legislative authority shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If after such hearing the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or

such part thereof as it deems to be for the public interest, and shall require the transmission line and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects the private right of way, if the crossing is so constructed and maintained as to do no unnecessary damage: *Provided*, That any person or corporation constructing the crossing or operating the transmission line on or along the county road or county street shall be liable to the county for all necessary expense incurred in restoring the county road or county street to a suitable condition for travel. [1985 c 469 § 62; 1961 c 14 § 80.32.010. Prior: 1903 c 173 § 1; RRS § 5430. Formerly RCW 80.32.010, 80.32.020 and 80.32.030.]

80.32.040 Grant of franchise subject to referendum.

All grants of franchises or rights for the conduct or distribution of electric energy, electric power, or electric light within any city or town of the state of Washington by the city council or other legislative body or legislative authority thereof, whether granted by ordinance, resolution, or other form of grant, contract, permission or license, shall be subject to popular referendum under the general laws of this state heretofore or hereafter enacted, or as may be provided by the charter provisions, heretofore or hereafter adopted, of any such city or town: *Provided*, That no petition for referendum may be filed after six months from the date of ordinance, resolution, or other form of grant, contract, permission, or license granting such franchise. [1961 c 14 § 80.32.040. Prior: (i) 1941 c 114 § 1; Rem. Supp. 1941 § 5430-1. (ii) 1941 c 114 § 2; Rem. Supp. 1941 § 5430-2.]

80.32.050 Sale or lease of plant and franchises. Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: *Provided*, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock or the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 173, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 80.32.050. Prior: 1903 c 173 § 3; RRS § 5431.]

80.32.060 Eminent domain. Every corporation, incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States, and doing business in this state, for the purpose of manufacturing or transmitting electric power, shall have the right to appropriate real estate and other property for right-of-way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: *Provided*, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the transmission line thereon has been authorized in accordance with RCW 80.32.010. [1961 c 14 § 80.32.060. Prior: 1903 c 173 § 2; No RRS.]

Eminent domain by corporations generally: Chapter 8.20 RCW.

80.32.070 Right of entry. Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 80.32.070. Prior: 1899 c 94 § 2; RRS § 11085.]

80.32.080 Duties of electrical companies exercising power of eminent domain. Any corporation authorized to do business in this state, which, under the present laws of the state, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads or railways, or for municipal lighting, and which by its charter or articles of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the state and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: *Provided*, That such corporation shall furnish such excess power at equal rates, quantity and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: *Provided further*, That no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five percent of the total amount of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated

will be applied to private purposes, provided the principal uses intended are public: *Provided*, That all public service or quasi public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of RCW 80.32.080 through 80.32.100. [1961 c 14 § 80.32.080. Prior: 1907 c 159 § 1; RRS § 5432.]

80.32.090 Limitation on use of electricity. Whenever any corporation has acquired any property by decree of appropriation based on proceedings in court under the provisions of RCW 80.32.080 through 80.32.100, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of RCW 80.32.080 through 80.32.100 shall be used or applied by such corporation for or to a business or trade not under the present laws deemed public or quasi public conducted by itself. [1961 c 14 § 80.32.090. Prior: 1907 c 159 § 2; RRS § 5433.]

80.32.100 Remedy for violations. In the event of the violation of any of the requirements of RCW 80.32.080 and 80.32.090 by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of the state upon the relation of the attorney general, or, if he shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of RCW 80.32.080 and 80.32.090. A violation of RCW 80.32.080 and 80.32.090 shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [1961 c 14 § 80.32.100. Prior: 1907 c 159 § 3; RRS § 5434.]

Chapter 80.36

TELECOMMUNICATIONS

(Formerly: Telephone and telegraph companies)

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Use of slugs to operate coin telephones: RCW 9.45.180.

80.36.010 Eminent domain. The right of eminent domain is hereby extended to all telecommunications companies organized or doing business in this state. [1985 c 450 § 15; 1961 c 14 § 80.36.010. Prior: 1890 p 292 § 1; RRS § 11338.]

80.36.020 Right of entry. Every corporation incorporated under the laws of this state or any state or territory of the United States for the purpose of constructing, operating or maintaining any telecommunications line in this state shall have the right to enter upon any land between the termini of its proposed telecommunications lines for the purpose of examining, locating and surveying the telecommunications line, doing no unnecessary damage thereby. [1985 c 450 § 16; 1961 c 14 § 80.36.020. Prior: 1888 p 65 § 1; RRS § 11339.]

80.36.030 Extent of appropriation. Such telecommunications company may appropriate so much land as may be actually necessary for its telecommunications line, with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining and operating its line and making all necessary repair. Such telecommunications company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right-of-way of any railroad company as may be necessary for the construction, maintenance and operation of its telecommunications line: *Provided*, That such appropriation shall not obstruct such railroad of the travel thereupon, nor interfere with the operation of such railroad. [1985 c 450 § 17; 1961 c 14 § 80.36.030. Prior: 1888 p 66 § 2; RRS § 11342.]

80.36.040 Use of roads, streets, and railroad right-of-way—When consent of city necessary. Any telecommunications company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines for public traffic along and upon any public road, street or highway, along or across the right-of-way of any railroad corporation, and may erect poles, posts, piers or abutments for supporting the insulators, wires and any other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: *Provided*, That when the right-of-way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of right of eminent domain, as provided by law: *Provided further*, That where the right-of-way as herein contemplated is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telecommunications lines can be erected thereon. [1985 c 450 § 18; 1961 c 14 § 80.36.040. Prior: 1890 p 292 § 5; RRS § 11352.]

80.36.050 Use of railroad rights-of-way—Penalty for refusal by railroad. Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a "post road," and the corporation or company owning the same shall allow telecommunications companies to construct and maintain telecommunications lines on and along the right-of-way of such railroad.

In case of the refusal or neglect of any railroad company or corporation to comply with the provisions of this section, said company or corporation shall be liable for damages in the sum of not less than one thousand dollars nor more than five thousand dollars for each offense, and one hundred dollars per day during the continuance thereof. [1985 c 450 § 19; 1961 c 14 § 80.36.050. Prior: (i) 1890 p 292 § 3; RRS § 11340. (ii) 1890 p 293 § 9; RRS § 11356.]

80.36.060 Liability for wilful injury to telecommunications property. Any person who wilfully and maliciously does any injury to any telecommunications property mentioned in RCW 80.36.070, is liable to the company for five times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. [1985 c 450 § 20; 1961 c 14 § 80.36.060. Prior: 1890 p 293 § 7; RRS § 11354.]

80.36.070 Liability for negligent injury to property—Notice of underwater cable. Any person who injures or destroys, through want of proper care, any necessary or useful fixtures of any telecommunications company, is liable to the company for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures or destroys the subaqueous cable of a telecommunications company, subjects its owners to the damages hereinbefore specified.

No telecommunications company can recover damages for the breaking or injury of any subaqueous telecommunications cable, unless such company has previously erected on either bank of the waters under which the cable is placed, a monument indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings and termini of the cable. [1985 c 450 § 21; 1961 c 14 § 80.36.070. Prior: (i) 1890 p 293 § 6; RRS § 11353. (ii) 1890 p 293 § 10; RRS § 11357.]

80.36.080 Rates, services, and facilities. All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient. [1985 c 450 § 22; 1961 c 14 § 80.36.080. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

80.36.090 Service to be furnished on demand. Every telecommunications company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service

as demanded. [1985 c 450 § 23; 1961 c 14 § 80.36.090. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

80.36.100 Tariff schedules to be filed and open to public. Every telecommunications company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, contracts and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points. If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, contracts and charges applicable for such through service. The schedules printed as aforesaid shall plainly state the places between which telecommunications service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations or forms of contract which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered. A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telecommunications company upon the demand of any person. A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telecommunications company in a conspicuous place in every station or office of such company. [1985 c 450 § 24; 1961 c 14 § 80.36.100. Prior: 1911 c 117 § 36; RRS § 10372.]

80.36.110 Tariff changes—Statutory notice—Exception. Unless the commission otherwise orders, no change shall be made in any rate, toll, rental, contract or charge, which shall have been filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100, which notice shall plainly state the changes

proposed to be made in the schedule then in force, and the time when the changed rate, toll, contract or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges, tolls, rentals or contracts without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published. When any change is made in any rate, toll, contract, rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commission may designate. [1985 c 450 § 25; 1961 c 14 § 80.36.110. Prior: 1911 c 117 § 37; RRS § 10373.]

80.36.120 Joint rates, contracts, etc. The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telecommunications companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties. [1985 c 450 § 26; 1961 c 14 § 80.36.120. Prior: 1911 c 117 § 38; RRS § 10374.]

80.36.130 Published rates to be charged—Exceptions. No telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's

Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telecommunications companies, railroad companies, and street railroad companies. [1985 c 450 § 27; 1961 c 14 § 80.36.130. Prior: 1911 c 117 § 40; RRS § 10376. FORMER PART OF SECTION: 1929 c 96 § 1, part now codified in RCW 81.28.080.]

80.36.140 Rates and services fixed by commission, when. Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telecommunications company for the transmission of messages by telecommunications, or for the rental or use of any telecommunications line, instrument, wire, appliance, apparatus or device or any telecommunications receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any telecommunications extension or extension system, or that the rules, regulations or practices of any telecommunications company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as provided in this title.

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title. [1985 c 450 § 28; 1961 c 14 § 80.36.140. Prior: 1911 c 117 § 55; RRS § 10391.]

80.36.150 Contracts filed with commission. Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line. [1985 c 450 § 29; 1961 c 14 § 80.36.150. Prior: 1911 c 117 § 39; RRS § 10375.]

80.36.160 Physical connections may be ordered, routing prescribed, and joint rates established. In order to provide toll telephone service where no such service is available, or to promote the most expeditious handling or most direct routing of toll messages and conversations, or to prevent arbitrary or unreasonable practices

which may result in the failure to utilize the toll facilities of all telecommunications companies equitably and effectively, the commission may, on its own motion, or upon complaint, notwithstanding any contract or arrangement between telecommunications companies, investigate, ascertain and, after hearing, by order (1) require the construction and maintenance of suitable connections between telephone lines for the transfer of messages and conversations at a common point or points and, if the companies affected fail to agree on the proportion of the cost thereof to be borne by each such company, prescribe said proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to such routing; and/or (3) establish reasonable joint rates or charges by or over said lines and connections and just, reasonable and equitable divisions thereof as between the telecommunications companies participating therein.

This section shall not be construed as conferring on the commission jurisdiction, supervision or control of the rates, service or facilities of any mutual, cooperative or farmer line company or association, except for the purpose of carrying out the provisions of this section. [1985 c 450 § 30; 1961 c 14 § 80.36.160. Prior: 1943 c 68 § 1; 1923 c 118 § 1; 1911 c 117 § 73; Rem. Supp. 1943 § 10409.]

80.36.170 Unreasonable preferences prohibited. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1985 c 450 § 31; 1961 c 14 § 80.36.170. Prior: 1911 c 117 § 42; RRS § 10378.]

80.36.180 Rate discrimination prohibited. No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. [1985 c 450 § 32; 1961 c 14 § 80.36.180. Prior: 1911 c 117 § 41; RRS § 10377.]

80.36.190 Long and short distance provision. No telecommunications company subject to the provisions of this title shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any

greater compensation for a through service than the aggregate of the intermediate rates subject to the provision of this title, but this shall not be construed as authorizing any such telecommunications company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telecommunications company the commission may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or messages in special cases after investigation, but the order must specify and prescribe the extent to which the telecommunications company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telecommunications company be relieved from the requirements of this section. [1985 c 450 § 33; 1961 c 14 § 80.36.190. Prior: 1911 c 117 § 44; RRS § 10380.]

80.36.200 Transmission of messages of other lines. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the messages of any other telecommunications company. [1985 c 450 § 34; 1961 c 14 § 80.36.200. Prior: 1911 c 117 § 45; RRS § 10381.]

80.36.210 Order of sending messages. It shall be the duty of any telegraph company, doing business in this state, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: *Provided*, That communications to and from public officers on official business, may have precedence over all other communications: *And, provided further*, That intelligence of general and public interest may be transmitted for publication out of its order. [1961 c 14 § 80.36.210. Prior: Code 1881 § 2361; RRS § 11344; prior: 1866 p 77 § 20.]

80.36.220 Duty to transmit messages—Penalty for refusal or neglect. Telecommunications companies shall receive, exchange and transmit each other's messages without delay or discrimination, and all telecommunications companies shall receive and transmit messages for any person.

In case of the refusal or neglect of any telecommunications company to comply with the provisions of this section, the penalty for the same shall be a fine of not more than five hundred nor less than one hundred dollars for each offense. [1985 c 450 § 35; 1961 c 14 § 80.36.220. Prior: (i) 1890 p 292 § 2; RRS § 11343. (ii) 1890 p 293 § 8; RRS § 11355.]

80.36.225 Pay telephones—Calls to operator without charge or coin insertion to be provided. All telecommunications companies and customer-owned, pay telephone providers doing business in this state and utilizing pay telephones shall provide a system whereby calls may be made to the operator without charge and

without requiring the use of credit cards or other payment devices, or insertion of any coins into such pay telephone. [1985 c 450 § 36; 1975 c 21 § 1.]

Emergency calls, yielding line: Chapter 70.85 RCW.

80.36.230 Exchange areas for telecommunications companies. The commission is hereby granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. [1985 c 450 § 37; 1961 c 14 § 80.36.230. Prior: 1941 c 137 § 1; Rem. Supp. 1941 § 11358–1.]

80.36.240 Exchange areas for telephone companies—Procedure to establish. The commission in conducting hearings, promulgating rules, and otherwise proceeding to make effective the provisions of RCW 80.36.230 and 80.36.240, shall be governed by, and shall have the powers provided in this title, as amended; all provisions as to review of the commission's orders and appeals to the supreme court or the court of appeals contained in said title, as amended, shall be available to all companies and parties affected by the commission's orders issued under authority of RCW 80.36.230 and 80.36.240. [1971 c 81 § 142; 1961 c 14 § 80.36.240. Prior: 1941 c 137 § 2; Rem. Supp. 1941 § 11358–2.]

80.36.250 Commission may complain of interstate rates. The commission may investigate all interstate rates and charges, classifications, or rules or practices relating thereto, for or in relation to the transmission of messages or conversations. Where any acts in relation thereto take place within this state which, in the opinion of the commission, are excessive or discriminatory, or are levied or laid in violation of the federal communications act of June 19, 1934, and acts amendatory thereof or supplementary thereto, or are in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply by petition to the Federal Communications Commission for relief, and may present to such federal commission all facts coming to its knowledge respecting violations of such act or the rulings, orders, or regulations of the federal commission. [1961 c 14 § 80.36.250. Prior: 1911 c 117 § 58; RRS § 10394.]

80.36.260 Betterments may be ordered. Whenever the commission shall find, after a hearing had on its own motion or upon complaint, that repairs or improvements to, or changes in, any telecommunications line ought reasonably be made, or that any additions or extensions should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telecommunications communications, the commission shall make and serve an order directing that such repairs, improvements, changes, additions or extensions be made in the manner to be specified therein. [1985 c 450 § 38; 1961 c 14 § 80.36.260. Prior: 1911 c 117 § 71; RRS § 10407.]

80.36.270 Effect on existing contracts. Nothing in this title shall be construed to prevent any telecommunications company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force on June 7, 1911 or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts: *Provided*, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telecommunications company party thereto, and thereupon such contract or contracts shall be terminated by such telecommunications company as and when directed by such order. [1985 c 450 § 39; 1961 c 14 § 80.36.270. Prior: 1911 c 117 § 43; RRS § 10379.]

80.36.300 Policy declaration. The legislature declares it is the policy of the state to:

- (1) Preserve affordable universal telecommunications service;
- (2) Maintain and advance the efficiency and availability of telecommunications service;
- (3) Ensure that customers pay only reasonable charges for telecommunications service;
- (4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies;
- (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and
- (6) Permit flexible regulation of competitive telecommunications companies and services. [1985 c 450 § 1.]

80.36.310 Classification as competitive telecommunications companies, services—Initiation of proceedings. Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties to a determination of their classification. [1985 c 450 § 3.]

80.36.320 Classification as competitive telecommunications companies, services—Factors considered—Minimal regulation—Equal access—Reclassification. (1) The commission shall classify a telecommunications company providing service in a relevant market as a competitive telecommunications company if it finds, after notice and hearing, that the telecommunications company has demonstrated that the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists which shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
- (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
- (c) Keep on file at the commission such current price lists and service standards as the commission may require; and
- (d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of *U.S. v. AT&T*, 552 F.Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if such revocation or reclassification would protect the public interest. [1985 c 450 § 4.]

80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Prices and rates—Reclassification. (1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if it finds, after notice and hearing, that the service is subject to effective

competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list effective on ten days notice to the commission and customers. The commission shall prescribe the form of notice. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest. [1985 c 450 § 5.]

80.36.340 Banded rates. The commission may approve a tariff which includes banded rates for any telecommunications service if such tariff is in the public interest. "Banded rate" means a rate which has a minimum and a maximum rate. The minimum rate in the rate band shall cover the cost of the service. Rates may be changed within the rate band upon such notice as the commission may order. [1985 c 450 § 6.]

80.36.350 Registration of new companies. Each telecommunications company not operating under tariff in Washington on January 1, 1985, shall register with the commission before beginning operations in this state. The registration shall be on a form prescribed by the commission and shall contain such information as the commission may by rule require, but shall include as a minimum the name and address of the company; the name and address of its registered agent, if any; the name, address, and title of each officer or director; its most current balance sheet; its latest annual report, if any; and a description of the telecommunications services it offers or intends to offer.

The commission may require as a precondition to registration the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

The commission may deny registration to any telecommunications company which:

(1) Does not provide the information required by this section;

(2) Fails to provide a performance bond, if required;

(3) Does not possess adequate financial resources to provide the proposed service; or

(4) Does not possess adequate technical competency to provide the proposed service.

The commission shall take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing. [1985 c 450 § 7.]

80.36.360 Exempted actions or transactions. For the purposes of RCW 19.86.170, actions or transactions of competitive telecommunications companies, or associated with competitive telecommunications services, shall not be deemed otherwise permitted, prohibited, or regulated by the commission. [1985 c 450 § 8.]

80.36.370 Certain services not regulated. The commission shall not regulate the following:

(1) One way broadcast or cable television transmission of television or radio signals;

(2) Private telecommunications systems;

(3) Telegraph services;

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices. [1985 c 450 § 9.]

80.36.380 Reports. Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services. [1987 c 505 § 78; 1987 c 293 § 6; 1985 c 450 § 41.]

Reviser's note: This section was amended by 1987 c 293 § 6 and by 1987 c 505 § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390 Telephone solicitation. (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or non-profit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or non-profit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization: *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

Legislative finding—1986 c 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

Charitable solicitations: Chapter 19.09 RCW.

80.36.400 Automatic dialing and announcing devices—Commercial solicitation by. (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

Legislative finding—1986 c 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1.]

80.36.410 Lifeline service—Legislative finding. (Effective until June 30, 1990.) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons. [1987 c 229 § 3.]

Expiration date—1987 c 229 §§ 3-10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [1987 c 229 § 12.]

80.36.420 Lifeline service—Availability, components. (Effective until June 30, 1990.) Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430. [1987 c 229 § 4.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.430 Lifeline service—Surcharge. (Effective until June 30, 1990.) Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund. [1987 c 229 § 5.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.440 Lifeline service—Rules. (Effective until June 30, 1990.) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.480. [1987 c 229 § 6.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 Lifeline service—Limitation. (Effective until June 30, 1990.) Lifeline service shall be limited to one residential access line per eligible household. [1987 c 229 § 7.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Lifeline service—Deposit waivers, connection fee discounts. (Effective until June 30, 1990.) Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered

from the lifeline fund. Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year. [1987 c 229 § 8.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.470 Lifeline service—Eligibility. (Effective until June 30, 1990.) Participants in the following department programs are eligible for lifeline assistance: Aid to families with dependent children, chore services, food stamps, supplemental security income, refugee assistance, and community options program entry system (COPES). The department shall notify the participants of their eligibility. [1987 c 229 § 9.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.480 Lifeline service—Legislative review. (Effective until June 30, 1990.) The energy and utilities committees of the legislature shall review the results of the lifeline program and shall explore by December 15, 1989, whether additional lifeline measures are warranted. [1987 c 229 § 10.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.900 Severability—1985 c 450. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 450 § 42.]

80.36.901 Legislative review—1985 c 450. The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1989-1991 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest. [1985 c 450 § 44.]

Chapter 80.40

UNDERGROUND NATURAL GAS STORAGE ACT

Sections

80.40.010	Definitions.
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80.40.030	Eminent domain.
80.40.040	Eminent domain—Application to oil and gas conservation committee prerequisite to eminent domain—Procedure.
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80.40.900	Short title.
80.40.910	Chapter to be liberally construed.
80.40.920	Severability—1963 c 201.

80.40.010 Definitions. As used in this chapter, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" shall mean the Washington utilities and transportation commission;

"Committee" shall mean the oil and gas conservation committee established by RCW 78.52.020;

"Natural gas" shall mean gas either in the earth in its original state or after the same has been produced by removal therefrom of component parts not essential to its use for light and fuel;

"Natural gas company" shall mean every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution, or underground storage of natural gas;

"Underground reservoir" shall mean any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

"Underground storage" shall mean the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir: *Provided*, The withdrawal of gas from an underground reservoir shall not be deemed a taking or producing within the terms of RCW 82.04.100. [1963 c 201 § 2.]

80.40.020 Declaration concerning the public interest. The underground storage of natural gas will promote the economic development of the state and provide for more economic distribution of natural gas to the domestic, commercial and industrial consumers of this state, thereby serving the public interest. [1963 c 201 § 3.]

80.40.030 Eminent domain. Any natural gas company having received an order under RCW 80.40.040 shall have the right of eminent domain to be exercised in the manner provided in and subject to the provisions of chapter 8.20 RCW to acquire for its use for the underground storage of natural gas any underground reservoir, as well as such other property or interests in property as may be required to adequately maintain and utilize the underground reservoir for the underground storage of natural gas, including easements and rights of way for access to and egress from the underground storage reservoir. The right of eminent domain granted hereby shall apply to property or property interests held in private ownership, provided condemnor has exercised good faith in negotiations for private sale or lease. No property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid. Any property or interest therein so acquired by any natural gas company shall be used exclusively for the purposes for which it was acquired. Any decree of appropriation hereunder shall define and limit the rights condemned and shall provide for the reversion of such rights to the defendant or defendants or their successors in interest upon abandonment of the underground storage project. Good faith exploration work or development work relative to the storage reservoir is conclusive evidence that its use has not been abandoned. The court may include in such decree such other relevant conditions, covenants and restrictions as it may deem fair and equitable. [1963 c 201 § 4.]

80.40.040 Eminent domain—Application to oil and gas conservation committee prerequisite to eminent domain—Procedure. Any natural gas company desiring to exercise the right of eminent domain to condemn any property or interest in property for the underground storage of natural gas shall first make application to the oil and gas conservation committee for an order approving the proposed project. Notice of such application shall be given by the committee to the utilities and transportation commission, to the director of the department of conservation, to the commissioner of public lands, and to all other persons known to have an interest in the property to be condemned. Said notice shall be given in the manner provided by RCW 8.20.020 as amended. The committee shall publish notice of said application at least once each week for three successive weeks in some newspaper of general circulation in the county or counties where the proposed underground storage project is located. If no written requests for hearing on the application are received by the committee within forty-five days from the date of service of notice of the application and publication thereof, the committee may proceed without hearing and issue its order. If a hearing is requested, a public hearing on the application will be held within the county or one of the counties where the proposed underground storage project is located. Any order approving the proposed underground storage project shall contain findings that (1) the underground storage of natural gas in the lands or property sought to be condemned is in the public interest and welfare; (2) the underground reservoir is reasonably practicable, and the applicant has complied with all applicable oil and gas conservation laws of the state of Washington; (3) the underground reservoir sought to be condemned is non-productive of economically recoverable valuable minerals or materials, or of oil or gas in commercial quantities under either primary or secondary recovery methods, and nonproductive of fresh water in commercial quantities with feasible and reasonable pumping lift; (4) the natural gas company has acquired the right by grant, lease or other agreement to store natural gas under at least sixty-five percent of the area of the surface of the land under which such proposed underground storage reservoir extends; (5) the natural gas company carries public liability insurance or has deposited collateral in amounts satisfactory to the committee or has furnished a financial statement showing assets in a satisfactory amount, to secure payment of any liability resulting from any occurrence arising out of or caused by the operation or use of any underground reservoir or facilities incidental thereto; (6) the underground storage project will not injure, pollute, or contaminate any usable fresh water resources; (7) the underground storage project will not injure, interfere with, or endanger any mineral resources or the development or extraction thereof. The order of the committee may be reviewed in the manner provided by chapter 34.04 RCW: *Provided*, That if an appeal is not commenced within thirty days of the date of the order of the committee, the same shall be final and conclusive. [1963 c 201 § 5.]

80.40.050 Rights of company using storage—Rights of owners of condemned land and interests therein. All natural gas in an underground reservoir utilized for underground storage, whether acquired by eminent domain or otherwise, shall at all times be the property of the natural gas company utilizing said underground storage, its heirs, successors, or assigns; and in no event shall such gas be subject to any right of the owner of the surface of the land under which said underground reservoir lies or of the owner of any mineral interest therein or of any person other than the said natural gas company, its heirs, successors and assigns to release, produce, take, reduce to possession, or otherwise interfere with or exercise any control thereof: *Provided*, That the right of condemnation hereby granted shall be without prejudice to the rights of the owner of the condemned lands or of the rights and interest therein to drill or bore through the underground reservoir in such a manner as shall protect the underground reservoir against pollution and against the escape of natural gas in a manner which complies with the orders, rules and regulations of the oil and gas conservation committee issued for the purpose of protecting underground storage and shall be without prejudice to the rights of the owners of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with regulations or orders to protect the underground storage shall be paid by the condemnor. [1963 c 201 § 6.]

80.40.060 Leases by commissioner of public lands. The commissioner of public lands is authorized to lease public lands, property, or any interest therein for the purpose of underground storage of natural gas. Any such lease shall be upon such terms and conditions as the said commissioner may deem for the best interests of the state and as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands, and may be for such primary term as said commissioner may determine and as long thereafter as the lessee continues to use such lands, property, or interest therein for underground storage of gas. [1963 c 201 § 7.]

80.40.070 Leases by county commissioners. Whenever it shall appear to the board of county commissioners of any county that it is for the best interests of said county, the taxing districts and the people thereof, that any county-owned or tax-acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of underground storage of natural gas therein, said board of county commissioners is hereby authorized to enter into written leases under the terms of which any county-owned lands, property, or interest therein are leased for the aforementioned purposes, with or without an option to purchase the land surface. Any such lease shall be upon such terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and may be for such primary term as said board may determine and as long thereafter as the lessee continues

to use the said lands, property, or interest therein for underground storage of natural gas. [1963 c 201 § 8.]

80.40.900 Short title. This act shall be known as the "Underground Natural Gas Storage Act." [1963 c 201 § 9.]

80.40.910 Chapter to be liberally construed. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for. [1963 c 201 § 10.]

80.40.920 Severability—1963 c 201. If any part or parts of this chapter or the application thereof to any person or circumstances is held to be unconstitutional such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. [1963 c 201 § 11.]

Chapter 80.50

ENERGY FACILITIES—SITE LOCATIONS

Sections

80.50.010	Legislative finding—Policy—Intent.
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80.50.900	Severability—1970 ex.s. c 45.
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80.50.902	Severability—1977 ex.s. c 371.

Energy supply emergencies: Chapter 43.21G RCW.

Regulation of dangerous wastes associated with energy facilities: RCW 70.105.110.

State energy office: Chapter 43.21F RCW.

Water pollution control, energy facilities, permits, etc., duties of energy facility site evaluation council: RCW 90.48.262.

80.50.010 Legislative finding—Policy—Intent. The legislature finds that the present and predicted

growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost. [1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Nuclear power facilities, joint operation: Chapter 54.44 RCW.

State energy office: Chapter 43.21F RCW.

80.50.020 Definitions. (1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter;

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires;

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Site" means any proposed or approved location of an energy facility;

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility;

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not

limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: *Provided*, That common carrier railroads or motor vehicles shall not be included;

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission;

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

(10) "Energy facility" means an energy plant or transmission facilities: *Provided*, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense;

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030;

(12) "Counsel for environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars;

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products;

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution. [1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.030 Energy facility site evaluation council—Created—Membership. (1) There is created and established the energy facility site evaluation council.

(2) (a) The chairman of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The salary of the chairman shall be determined under RCW 43.03.040. The chairman is a "state employee" for the purposes of chapter 42.18 RCW.

(b) The chairman is the chief executive officer of the council and shall, with the concurrence of the council, execute all official documents, contracts, and other materials on behalf of the council. The chairman shall appoint an executive secretary to serve at the pleasure of the chairman. The chairman may appoint a confidential secretary to serve at the pleasure of the chairman. The chairman shall appoint and prescribe the duties of such clerks, employees, and agents as may be necessary to carry out this chapter: *Provided*, That such persons shall be employed pursuant to chapter 41.06 RCW.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (a) Department of ecology;
- (b) Department of fisheries;

- (c) *Department of game;
- (d) Department of parks and recreation;
- (e) Department of social and health services;
- (f) State energy office;
- (g) Department of trade and economic development;
- (h) Utilities and transportation commission;
- (i) Office of financial management;
- (j) Department of natural resources;
- (k) Department of community development;
- (l) Department of agriculture;
- (m) Department of transportation.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site;

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person. [1986 c 266 § 51. Prior: 1985 c 466 § 71; 1985 c 67 § 1; 1985 c 7 § 151; prior: 1984 c 125 § 18; 1984 c 7 § 372; 1977 ex.s. c 371 § 3; 1975-'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—**Severability**—1985 c 466: See notes following RCW 43.31.005.

Severability—**Headings**—**Effective date**—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—**Effective date**—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.040 Energy facility site evaluation council—**Powers enumerated.** The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.04 RCW,

to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.04 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: *Provided*, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: *Provided further*, That the council shall retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: *Provided*, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: *And provided further*, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter. [1985 c 67 § 2; 1979 ex.s. c 254 § 1; 1977 ex.s. c 371 § 4; 1975-'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.060 Energy facilities to which chapter applies—Applications for certification—Forms—Information. (1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020(7) and *(17), as now or hereafter amended. No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and *(17), as now or hereafter amended.

(3) Applications for certification of energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(4) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [1977 ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

***Reviser's note:** The reference to subsection (17) of RCW 80.50.020 appears to be erroneous. Subsection (14) was apparently intended.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.071 Council to receive applications—Fees or charges for application processing or certification monitoring. (1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

(a) A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: *Provided*, That said costs exceeding a total of the twenty-five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.

(b) Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council in processing the application. Such costs shall include, but are not limited to, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application.

Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.

The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: *Provided*, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit.

The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: *Provided*, That if the actual, reasonable, and necessary expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(2) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following

receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder. [1977 ex.s. c 371 § 16.]

80.50.075 Expedited processing of applications. (1)

Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

(a) The environmental impact of the proposed energy facility;

(b) The area potentially affected;

(c) The cost and magnitude of the proposed energy facility; and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of RCW 80.50.071; nor

(b) Hold a contested case hearing under chapter 34.04 RCW on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [1977 ex.s. c 371 § 17.]

80.50.080 Counsel for the environment. After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [1977 ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

80.50.090 Public hearings. (1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: *Provided*, That the place of such public hearing shall be as close as practical to the proposed site.

(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as a contested case under chapter 34.04 RCW, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [1970 ex.s. c 45 § 9.]

80.50.100 Recommendations to governor—Approval or rejection of certification—Reconsideration.

(1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(a) Approve the application and execute the draft certification agreement; or

(b) Reject the application; or

(c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the contested case for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The

certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information. [1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.110 Chapter governs and supersedes other law or regulations—Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended. [1975-'76 2nd ex.s. c 108 § 37; 1970 ex.s. c 45 § 11.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.120 Effect of certification. (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not. [1977 ex.s. c 371 § 10; 1975-'76 2nd ex.s. c 108 § 38; 1970 ex.s. c 45 § 12.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.130 Revocation or suspension of certification—Grounds. Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 ex.s. c 45 § 13.]

80.50.140 Review. (1) A final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.04 RCW and this section. Petitions for review of such a decision shall be filed in the Thurston county superior court. All petitions for review of a decision under RCW 80.50.100 shall be consolidated into a single proceeding before the Thurston county superior court. The Thurston county superior court shall certify the petition for review to the supreme court upon the following conditions:

(a) Review can be made on the administrative record;

(b) Fundamental and urgent interests affecting the public interest and development of energy facilities are involved which require a prompt determination;

(c) An appeal to the supreme court would likely be made regardless of the determination of the Thurston county superior court; and

(d) The record is complete for review.

The Thurston county superior court shall assign a petition for review of a decision under RCW 80.50.100 for hearing at the earliest possible date and shall expedite such petition in every way possible. If the court finds that review cannot be limited to the administrative record as set forth in subparagraph (a) of this subsection because there are alleged irregularities in the procedure before the council not found in the record, but finds that the standards set forth in subparagraphs (b), (c), and (d) of this subsection are met, the court shall proceed to take testimony and determine such factual issues raised by the alleged irregularities and certify the petition and its determination of such factual issues to the supreme court. Upon certification, the supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW. [1981 c 64 § 3; 1977 ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

80.50.150 Enforcement of compliance—Penalties.

(1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter or a National Pollutant Discharge Elimination System (hereafter in this section,

NPDES) permit issued by the council pursuant to chapter 90.48 RCW or any permit issued pursuant to RCW 80.50.040(14). The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any permit issued pursuant to RCW 80.50.040(14). The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: *Provided*, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Wilful or criminally negligent, as defined in RCW 9A.08.010(d), violation of any provision of an NPDES permit issued by the council pursuant to chapter 90.48 RCW or any permit issued by the council pursuant to RCW 80.50.040(14) or any emission standards promulgated by the council in order to implement the Federal Clean Air Act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter shall be deemed a crime, and upon conviction thereof shall be punished by a fine of up to twenty-five thousand dollars per day and costs of prosecution. Any violation of this subsection shall be a gross misdemeanor.

(4) Any person knowingly making any false statement, representation, or certification in any document in any NPDES form, notice, or report required by an NPDES permit or in any form, notice, or report required for or by any permit issued pursuant to *RCW 80.50.090(14) shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution.

(5) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a

notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the council within thirty days after it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(7) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [1979 ex.s. c 254 § 2; 1979 c 41 § 1; 1977 ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

Reviser's note: (1) This section was amended by 1979 c 41 § 1 and by 1979 ex.s. c 254 § 2, each without reference to the other. Both

amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) The reference to RCW 80.50.090(14) appears to be in error; that section has only four subsections and concerns public hearings, not issuance of permits. RCW 80.50.040(14) relates to issuance of permits.

80.50.160 Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 ex.s. c 45 § 16.]

80.50.175 Study of potential sites—Fee—Disposition of payments. (1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: *Provided*, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location. [1983 c 3 § 205; 1977 ex.s. c 371 § 13; 1975-'76 2nd ex.s. c 108 § 40; 1974 ex.s. c 110 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030. Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW. [1977 ex.s. c 371 § 14.]

80.50.190 Disposition of receipts from applicants. The state general fund shall be credited with all receipts from applicants paid to the state pursuant to chapter 80.50 RCW. Such funds shall be used only by the council for the purposes set forth in chapter 80.50 RCW. All expenditures shall be authorized by law. [1977 ex.s. c 371 § 15.]

80.50.800 Rules of thermal plant site evaluation council to continue until amended or rescinded. All rules of the thermal power plant site evaluation council in effect on March 15, 1976 shall continue in full force and effect until amended or rescinded by the energy facility site evaluation council after March 15, 1976. [1975-'76 2nd ex.s. c 108 § 42.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.900 Severability—1970 ex.s. c 45. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1970 ex.s. c 45 § 17.]

80.50.901 Severability—1974 ex.s. c 110. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1974 ex.s. c 110 § 3.]

80.50.902 Severability—1977 ex.s. c 371. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to

other persons or circumstances is not affected. [1977 ex.s. c 371 § 20.]

Chapter 80.52

ENERGY FINANCING VOTER APPROVAL ACT

Sections

80.52.010	Short title.
80.52.020	Purpose.
80.52.030	Definitions.
80.52.040	Election approval required before issuance of bonds.
80.52.050	Conduct of election.
80.52.060	Form of ballot propositions.
80.52.070	Approval of request for financing authority.
80.52.080	Priorities.
80.52.900	Severability—1981 2nd ex.s. c 6.
80.52.910	Effective dates—1981 2nd ex.s. c 6.

80.52.010 Short title. This chapter may be cited as the Washington state energy financing voter approval act. [1981 2nd ex.s. c 6 § 1 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.020 Purpose. The purpose of this chapter is to provide a mechanism for citizen review and approval of proposed financing for major public energy projects. The development of dependable and economic energy sources is of paramount importance to the citizens of the state, who have an interest in insuring that major public energy projects make the best use of limited financial resources. Because the construction of major public energy projects will significantly increase utility rates for all citizens, the people of the state hereby establish a process of voter approval for such projects. [1981 2nd ex.s. c 6 § 2 (Initiative Measure No. 394, approved November 3, 1981).]

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

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, volume one, January 12, 1981, and unless, as of July 1, 1982, the

projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource. [1981 2nd ex.s. c 6 § 3 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.040 Election approval required before issuance of bonds. No public agency or assignee of a public agency may issue or sell bonds to finance the cost of construction or the cost of acquisition of a major public energy project, or any portion thereof, unless it has first obtained authority for the expenditure of the funds to be raised by the sale of such bonds for that project at an election conducted in the manner provided in this chapter. [1981 2nd ex.s. c 6 § 4 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.050 Conduct of election. The election required under RCW 80.52.040 shall be conducted in the manner provided in this section.

(1) (a) If the applicant is a public utility district, joint operating agency, city, or county, the election shall be among the voters of the public utility district, city, or county, or among the voters of the local governmental entities comprising the membership of the joint operating agency.

(b) If the applicant is any public agency other than those described in subsection (1)(a) of this section, or is

an assignee of a joint operating agency and not itself a joint operating agency, the election shall be conducted state-wide in the manner provided in Title 29 RCW for state-wide elections.

(2) The election shall be held at the next state-wide general election occurring more than ninety days after submission of a request by an applicant to the secretary of state unless a special election is requested by the applicant as provided in this section.

(3) If no state-wide election can be held under subsection (2) of this section within one hundred twenty days of the submission to the secretary of state of a request by an applicant for financing authority under this chapter, the applicant may request that a special election be held if such election is necessary to avoid significant delay in construction or acquisition of the energy project. Within ten days of receipt of such a request for a special election, the secretary of state shall designate a date for the election pursuant to RCW 29.13.010 and certify the date to the county auditor of each county in which an election is to be held under this section.

(4) Prior to an election under this section, the applicant shall submit to the secretary of state a cost-effectiveness study, prepared by an independent consultant approved by the state finance committee, pertaining to the major public energy project under consideration. The study shall be available for public review and comment for thirty days. At the end of the thirty-day period, the applicant shall prepare a final draft of the study which includes the public comment, if any.

(5) The secretary of state shall certify the ballot issue for the election to be held under this section to the county auditor of each county in which an election is to be held. The certification shall include the statement of the proposition as provided in RCW 80.52.060. The costs of the election shall be relieved by the applicant in the manner provided by RCW 29.13.045. In addition, the applicant shall reimburse the secretary of state for the applicant's share of the costs related to the preparation and distribution of the voters' pamphlet required by subsection (6) of this section and such other costs as are attributable to any election held pursuant to this section.

(6) Prior to an election under this section, the secretary of state shall provide an opportunity for supporters and opponents of the requested financing authority to present their respective views in a voters' pamphlet which shall be distributed to the voters of the local governmental entities participating in the election. Upon submission of an applicant's request for an election pursuant to this section, the applicant shall provide the secretary of state with the following information regarding each major public energy project for which the applicant seeks financing authority at such election, which information shall be included in the voters' pamphlet:

(a) The name, location, and type of major public energy project, expressed in common terms;

(b) The dollar amount and type of bonds being requested;

(c) If the bond issuance is intended to finance the acquisition of all or a portion of the project, the anticipated total cost of the acquisition of the project;

(d) If the bond issuance is intended to finance the planning or construction of all or a portion of the project, the anticipated total cost of construction of the project;

(e) The projected average rate increase for consumers of the electricity to be generated by the project. The rate increase shall be that which will be necessary to repay the total indebtedness incurred for the project, including estimated interest;

(f) A summary of the final cost-effectiveness study conducted under subsection (4) of this section;

(g) The anticipated functional life of the project;

(h) The anticipated decommissioning costs of the project; and

(i) If a special election is requested by the applicant, the reasons for requesting a special election. [1982 c 88 § 1; 1981 2nd ex.s. c 6 § 5 (Initiative Measure No. 394, approved November 3, 1981).]

Effective date—1982 c 88: "This act shall take effect on July 1, 1982." [1982 c 88 § 2.]

80.52.060 Form of ballot propositions. The proposition for each major public energy project listed upon a ballot pursuant to this chapter shall be in the form provided in this section.

(1) If the funds are intended to finance the planning or construction of all or a portion of the project, the proposition shall read substantially as follows:

"Shall _____ (name of applicant) be authorized to spend _____ (dollar amount of financing authority requested) to construct the _____ (name of the project) _____ (type of project) located at _____ (location), the anticipated total construction cost of which is _____ (anticipated cost of construction)?"

(2) If the financing authority is intended to finance the acquisition of all or a portion of the project from another party, the proposition shall read substantially as follows:

"Shall _____ (name of applicant) be authorized to spend _____ (dollar amount of financing authority requested) to acquire the _____ (name of project) _____ (type of project) located at _____ (location), the anticipated total acquisition cost of which is _____ (anticipated cost of acquisition)?"

[1981 2nd ex.s. c 6 § 6 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.070 Approval of request for financing authority. A request for financing authority pursuant to this chapter shall be considered approved if it receives the approval of a majority of those voting on the request. [1981 2nd ex.s. c 6 § 7 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.080 Priorities. In planning for future energy expenditures, public agencies shall give priority to projects and resources which are cost-effective. Priority for future bond sales to finance energy expenditures by public agencies shall be given: First, to conservation;

second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel-conversion efficiency; and fourth, to all other resources. This section does not apply to projects which are under construction on December 3, 1981. [1981 2nd ex.s. c 6 § 8 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.900 Severability—1981 2nd ex.s. c 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 6 § 10 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.910 Effective dates—1981 2nd ex.s. c 6. *Section 8 of this act shall take effect immediately. The remainder of this act shall take effect on July 1, 1982. Public agencies intending to submit a request for financing authority under this act are authorized to institute the procedures specified in **section 5(4) of this act prior to the effective date of this act. [1981 2nd ex.s. c 6 § 11 (Initiative Measure No. 394, approved November 3, 1981).]

Reviser's note: *(1) "Section 8 of this act" is codified as RCW 80.52.080.

** (2) "section 5(4) of this act" is codified as RCW 80.52.050(4).

Chapter 80.54

ATTACHMENTS TO TRANSMISSION FACILITIES

Sections

80.54.010	Definitions.
80.54.020	Regulation of rates, terms, and conditions—Criteria.
80.54.030	Commission order fixing rates, terms, or conditions.
80.54.040	Criteria for just and reasonable rate.
80.54.050	Exemptions from chapter.
80.54.060	Adoption of rules.
80.54.070	Uniform attachment rates within utility service area.

80.54.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Attachment" means any wire or cable for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, which is authorized to construct attachments upon, along, under, or across the public ways.

(3) "Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government. [1985 c 450 § 40; 1979 c 33 § 1.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

80.54.020 Regulation of rates, terms, and conditions—Criteria. The commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient. [1979 c 33 § 2.]

80.54.030 Commission order fixing rates, terms, or conditions. Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made. [1979 c 33 § 3.]

80.54.040 Criteria for just and reasonable rate. A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities. [1979 c 33 § 4.]

80.54.050 Exemptions from chapter. Nothing in this chapter shall be deemed to apply to any attachment by one or more electrical companies on the facilities of one or more other electrical companies. [1979 c 33 § 5.]

80.54.060 Adoption of rules. The commission shall adopt rules, regulations and procedures relative to the implementation of this chapter. [1979 c 33 § 6.]

80.54.070 Uniform attachment rates within utility service area. Notwithstanding any other provision of law, a utility as defined in RCW 80.54.010(3) and any utility

not regulated by the utilities and transportation commission shall levy attachment rates which are uniform for all licensees within the utility service area. [1979 c 33 § 7.]

Chapter 80.58 NONPOLLUTING POWER GENERATION EXEMPTION

Sections

80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.

80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. The generation of power by a nonpolluting, renewable energy source by an individual natural person not otherwise engaged in the business of power generation is declared to be exempt from all statutes and rules otherwise regulating the generation of power: *Provided*, That such an individual is hereby authorized to provide such power to the utility servicing the property on which the power is generated and the servicing utility is hereby authorized to accept such power under such terms and conditions as may be agreed to between the parties. [1979 ex.s. c 191 § 11.]

Severability—1979 ex.s. c 191: See RCW 82.35.900.

Chapter 80.62 HEAT SUPPLIERS

Sections

80.62.010 Legislative intent.
80.62.020 Definitions.
80.62.030 Limited jurisdiction over heat suppliers.
80.62.040 Regulations and fees.
80.62.050 Operating permit, issuance of.
80.62.060 Contracts with customers—Terms, approval by commission.
80.62.070 Basis for approval of rates.
80.62.080 Continuing jurisdiction of commission.
80.62.900 Expiration date, exception.
80.62.910 Severability—1983 c 94.

80.62.010 Legislative intent. The legislature finds that traditional utility regulation may pose unnecessary barriers to using Washington's heat sources for district heating purposes. The legislature further finds that regulation may be necessary to protect the interests of the public in securing adequate heating services from these heat sources at reasonable cost. Therefore, it is the intent of the legislature and the purpose of this chapter to provide a streamlined permitting system which will encourage development and efficient utilization and distribution of heat while continuing to provide reasonable customer protections. [1987 c 522 § 1; 1983 c 94 § 1.]

80.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomass energy system" means a system that provides for the production or collection of organic materials such as wood and agricultural residues and municipal solid waste that are primarily organic materials and the conversion or use of such material for the production of heat or substitute fuels through several processes including, but not limited to, burning, pyrolysis, or anaerobic digestion.

(2) "Geothermal heat" means the natural thermal energy of the earth.

(3) "Heat" means thermal energy.

(4) "Heat source" includes but is not limited to (a) any integral part of a heat production or heat rejection system of an industrial facility, cogeneration facility, or electric power generation facility, (b) geothermal well or spring, (c) biomass energy system, (d) solar collection facility, and (e) hydrothermal resource or heat extraction process.

(5) "Heat supplier" means any private person, company, association, or corporation engaged or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public heat from a heat source for any beneficial use other than electricity generation.

(6) "Commission" means the utilities and transportation commission.

(7) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(8) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(9) "Waste heat" means the thermal energy which otherwise would be released to the environment from an industrial process, electric generation, or other process.

(10) "Hydrothermal resource" means the thermal energy available in wastewater, sewage effluent, wells, or other water sources, natural or man-made. [1987 c 522 § 2; 1983 c 94 § 2.]

80.62.030 Limited jurisdiction over heat suppliers. Notwithstanding any other provision of law, heat suppliers are not subject to the general jurisdiction of the commission, but are only subject to the limited jurisdiction conferred to the commission by this chapter. Nothing in this chapter prohibits existing regulated public utilities from providing heat from a heat source, as defined in RCW 80.62.020, and thereby being eligible to seek an operating permit as a heat supplier as provided by this chapter. [1983 c 94 § 3.]

80.62.040 Regulations and fees. The commission shall, within one hundred eighty days of July 24, 1983, adopt regulations governing application contents, customer heating service contracts, review procedures, and fees necessary in implementing this chapter. The commission shall set the fees so that total fees collected will approximately equal the reasonable cost of supervising and regulating heat suppliers. [1983 c 94 § 4.]

80.62.050 Operating permit, issuance of. Upon application by a heat supplier, the commission shall notify all providers of heating services within the designated service territory of pending application, and shall issue a nonexclusive operating permit to provide heating services within a designated service territory, as proposed by the applicant, if the commission reasonably determines:

(1) The applicant is qualified and financially responsible to provide the services for which the permit is sought;

(2) The applicant's proposed system design is adequate for that purpose; and

(3) The contract to be offered to the applicant's customers substantially complies with the requirements set forth in RCW 80.62.060. [1983 c 94 § 5.]

80.62.060 Contracts with customers—Terms, approval by commission. (1) Each heat supplier shall enter into a contract with each customer proposed to be served pursuant to an operating permit.

(2) The terms of the contract, or any renewal, modification, termination, or expiration thereof, to be offered to each customer or class of customers, or representatives thereof, shall be subject to the approval of the commission and shall specify, but not be limited to:

(a) The period of time during which the heating service will be provided;

(b) The rates or the formula for determining rates to be charged during the contract term; and

(c) The adequacy of the service provided during the contract term. [1983 c 94 § 6.]

80.62.070 Basis for approval of rates. In accordance with the purpose of this chapter as set forth in RCW 80.62.010, commission approval of the rates or rate formula specified in the customer heating service contract shall not be based upon the heat supplier's cost of providing services or its rate of return on investment, but shall be based upon the reasonableness of the proposed rates in relation to the rates charged to customers for comparable heating services such as electric, oil, and natural gas heating otherwise available in the proposed service territory. Any proposed rate less than eighty percent of the lowest rate of the foregoing services shall be deemed reasonable as a matter of law and shall be approved. [1983 c 94 § 7.]

80.62.080 Continuing jurisdiction of commission. The commission shall have continuing jurisdiction to regulate heat suppliers as provided in this chapter to ensure compliance with the terms of any operating permit issued in accordance with this chapter. [1983 c 94 § 8.]

80.62.900 Expiration date, exception. This chapter expires July 1, 2003, but suppliers may continue to operate under this chapter for ten years from the date of issue of their first operating permit. [1983 c 94 § 9.]

80.62.910 Severability—1983 c 94. If any provision of this chapter or its application to any person or

circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1983 c 94 § 10.]

Chapter 80.66

RADIO COMMUNICATIONS SERVICE COMPANIES

Sections

80.66.010 Scope of regulation—Filing of certain agreements.

80.66.010 Scope of regulation—Filing of certain agreements. The commission shall not regulate radio communications service companies, except that:

(1) The commission may regulate the rates, services, facilities, and practices of radio communications service companies, within a geographic service area or a portion of a geographic service area in which it is authorized to operate by the federal communications commission if it is the only provider of basic telecommunications service within such geographic service area or such portion of a geographic service area. For purposes of this section, "basic telecommunications service" means voice grade, local exchange telecommunications service.

(2) Actions or transactions of radio communications service companies that are not regulated pursuant to subsection (1) of this section shall not be deemed actions or transactions otherwise permitted, prohibited, or regulated by the commission for purposes of RCW 19.86.170.

(3) Radio communications service companies shall file with the commission copies of all agreements with any of their affiliated interests as defined in RCW 80.16.010, showing the rates, tolls, rentals, contracts, and charges of such affiliated interest for services rendered and equipment and facilities supplied to the radio communications service company, except that such agreements need not be filed where the services rendered and equipment and facilities supplied are provided by the affiliated interest under a tariff or price list filed with the commission. [1985 c 167 § 2.]

Chapter 80.98

CONSTRUCTION

Sections

80.98.010 Continuation of existing law.

80.98.020 Title, chapter, section headings not part of law.

80.98.030 Invalidity of part of title not to affect remainder.

80.98.040 Repeals and saving.

80.98.050 Emergency—1961 c 14.

80.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 14 § 80.98.010.]

80.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 80.98.020.]

80.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 80.98.030.]

80.98.040 Repeals and saving. See 1961 c 14 § 80.98.040.

80.98.050 Emergency—1961 c 14. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 80.98.050.]

Title 81

TRANSPORTATION

Chapters

- 81.01 General provisions.
- 81.04 Regulations—General.
- 81.08 Securities.
- 81.12 Transfers of property.
- 81.16 Affiliated interests.
- 81.20 Investigation of public service companies.
- 81.24 Regulatory fees.
- 81.28 Common carriers in general.
- 81.29 Common carriers—Limitations on liability.
- 81.34 Railroads—State and federal regulation.
- 81.36 Railroads—Corporate powers and duties.
- 81.40 Railroads—Employee requirements and regulations.
- 81.44 Common carriers—Equipment.
- 81.48 Railroads—Operating requirements and regulations.
- 81.52 Railroads—Rights of way—Spurs—Fences.
- 81.53 Railroads—Crossings.
- 81.54 Railroads—Inspection of industrial crossings.
- 81.56 Railroads—Shippers and passengers.
- 81.60 Railroads—Special police and police regulations.
- 81.61 Railroads—Passenger-carrying vehicles for employees.
- 81.62 Rail development commission.
- 81.64 Street railways.
- 81.66 Transportation for the elderly and the handicapped.
- 81.68 Auto transportation companies.
- 81.70 Passenger charter carriers.
- 81.72 Taxicab companies.
- 81.75 Transportation centers.
- 81.77 Garbage and refuse collection companies.
- 81.80 Motor freight carriers.
- 81.84 Steamboat companies.
- 81.88 Gas and oil pipelines.
- 81.96 Western regional short-haul air transportation compact.
- 81.98 Construction.

Reviser's note: Throughout this title the name and designation "public service commission" and terms of similar import have been changed to read "utilities and transportation commission" under the authority of 1961 c 290 § 1, which reads "From and after the effective date of this act the Washington public service commission shall be known and designated as the Washington utilities and transportation commission." The effective date of the act was midnight June 7, 1961; see preface 1961 session laws.

Assessment for property tax purposes, of private car companies: Chapter 84.16 RCW.
public service companies: Chapter 84.12 RCW.

Commencement of actions against certain railroad corporations, etc.: RCW 4.28.080.

Constitutional limitations on certain corporations: State Constitution Art. 12.

Corporate seals, effect of absence from instrument: RCW 64.04.105.
Counties, signs, signals, etc.: RCW 36.86.040.

Easements

of public service companies taxable as personalty: RCW 84.20.010.

over certain public lands: Chapter 79.01 RCW.

Eminent domain by corporations: Chapter 8.20 RCW.

Franchises on

county roads and bridges: Chapter 36.55 RCW.

state highways: Chapter 47.44 RCW.

Free transportation for public officers, prohibited: State Constitution Art. 12 § 20.

Highway user tax structure: Chapter 46.85 RCW.

Labor liens: Chapter 60.32 RCW.

Mechanics', materialmen's liens: Chapter 60.04 RCW.

Metropolitan municipal corporations: Chapter 35.58. RCW.

Public utility tax: Chapter 82.16 RCW.

Railroad grade crossings, traffic devices required by utilities and transportation commission: RCW 47.36.050.

Safety and health, tunnels and underground construction: Chapter 49-.24 RCW.

Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.

Taxation of rolling stock: State Constitution Art. 12 § 17.

Traffic control at work sites: Chapter 47.36 RCW.

Transporting natural gas: RCW 80.28.210.

Chapter 81.01

GENERAL PROVISIONS

Sections

- 81.01.010 Adoption of provisions of chapter 80.01 RCW.

81.01.010 Adoption of provisions of chapter 80.01 RCW. The provisions of chapter 80.01 RCW, as now or hereafter amended, apply to Title 81 RCW as fully as though they were set forth herein. [1961 c 14 § 81.01.010.]

Chapter 81.04

REGULATIONS—GENERAL

Sections

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81.04.010 Definitions. As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or copartnership.

"Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations,

terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad, within this state.

"Street railroad company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad.

"Railroad company" includes every corporation, company, association, joint stock association, partnership or person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Express company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, who shall engage in or transact the business of carrying any freight, merchandise or property for hire on the line of any common carrier operated in this state.

"Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, steamboat companies, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

"Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha or electric motors.

"Steamboat company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating or managing any vessel over and upon the waters of this state.

"Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported, and the transmission of credit.

"Transportation of persons" includes any service in connection with the receiving, carriage and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort and convenience of the person transported.

"Public service company" includes every common carrier.

The term "service" is used in this title in its broadest and most inclusive sense. [1981 c 13 § 2; 1961 c 14 § 81.04.010. Prior: 1955 c 316 § 3; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

81.04.020 Procedure before commission and courts. Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [1961 c 14 § 81.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

81.04.030 Number of witnesses may be limited. In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 81.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

81.04.040 Witness fees and mileage. Each witness who appears under subpoena shall receive for his attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [1961 c 14 § 81.04.040. Prior: 1955 c 79 § 3; 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [1961 c 14 § 81.04.050. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.060 Depositions—Service of process. The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, waybills, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 81.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: *Provided*, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [1961 c 14 § 81.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

81.04.075 Manner of serving papers. All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 81.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 81.04.370.]

81.04.080 Annual reports. Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to passengers, employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate traffic, the nature of the traffic movement showing the percentage of the ton miles each class of commodity bears to the total ton mileage, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and the proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning fares, charges or freights, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia within three months after the close of the designated year for which such report is made, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires. [1961 c 14 § 81.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

81.04.090 Forms of records to be prescribed. The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 81.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

81.04.100 Production of out-of-state books and records. The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 81.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

81.04.110 Complaints—Hearings. Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

When two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or

practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: *Provided*, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. [1961 c 14 § 81.04.110. Prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

81.04.120 Hearings—Order—Record. At the time fixed for the hearing mentioned in RCW 81.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the

record and proceedings in the cause, shall constitute the record of the commission. [1961 c 14 § 81.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

81.04.130 Suspension of tariff changes. Whenever any public service company, other than a railroad company, files with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, fare, charge, rental, or toll previously charged, the commission has power, either upon its own motion or upon complaint, upon notice, to hold a hearing concerning the proposed change and the reasonableness and justness of it. Pending the hearing and the decision the commission may suspend the operation of the rate, fare, charge, rental, or toll, if the change is proposed by a common carrier subject to the jurisdiction of the commission, for a period not exceeding seven months, and, if proposed by a public service company other than such a common carrier, for a period not exceeding ten months from the time the change would otherwise go into effect. After a full hearing the commission may make such order in reference to the change as would be provided in a hearing initiated after the change had become effective.

At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, fare, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable is upon the public service company. When any common carrier subject to the jurisdiction of the commission files any tariff, classification, rule, or regulation the effect of which is to decrease any rate, fare, or charge, the burden of proof to show that such decrease is just and reasonable is upon the common carrier. [1984 c 143 § 1; 1961 c 14 § 81.04.130. Prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

Severability—1984 c 143: See RCW 81.34.900.

81.04.140 Order requiring joint action. Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 81.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

81.04.150 Remunerative rates, change without approval prohibited. Whenever the commission finds, after hearing had upon its own motion or upon complaint as provided in this chapter, that any rate, toll, rental, or charge that has been the subject of complaint and inquiry is sufficiently remunerative to the public service company, other than a railroad company, affected by it, the commission may order that the rate, toll, rental, or charge shall not be changed, altered, abrogated, or discontinued, nor shall there be any change in the classification that will change or alter the rate, toll, rental, or charge without first obtaining the consent of the commission authorizing the change to be made. [1984 c 143 § 2; 1961 c 14 § 81.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

Severability—1984 c 143: See RCW 81.34.900.

81.04.160 Rules and regulations. The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the bulletining of trains, showing the time of arrival and departure of all trains, and the probable arrival and departure of delayed trains; the conditions to be contained in and become a part of contracts for transportation of persons and property, and any and all services concerning the same, or connected therewith; the time that station rooms and offices shall be kept open; rules governing demurrage and reciprocal demurrage, and to provide reasonable penalties to expedite the prompt movement of freight and release of cars, the limits of express deliveries in cities and towns, and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations shall be promulgated and issued by the commission on its own motion, and shall be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission shall have, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings: *Provided*, No person desiring to be present at such hearing shall be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [1961 c 14 § 81.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

81.04.170 Review of orders. Any complainant or any public service company affected by any findings or order of the commission, and deeming such findings or order to be contrary to law, may, within thirty days after the

service of the findings or order upon him or it, apply to the superior court of Thurston county for a writ of review, for the purpose of having the reasonableness and lawfulness of such findings or order inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected further time be allowed by the court, and shall direct the commission to certify its record in the case to the court. Such cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside or remanding for further action the findings or order of the commission under review. The reasonable cost of preparing the transcript of testimony taken before the commission shall be assessable as part of the statutory court costs, and the amount thereof, if collected by the commission, shall be deposited in the public service revolving fund. In case such findings or order be set aside, or reversed and remanded, the court shall make specific findings based upon evidence in the record indicating clearly all respects in which the commission's findings or order are erroneous. [1961 c 14 § 81.04.170. Prior: 1937 c 169 § 3; 1911 c 117 § 86; RRS § 10428.]

81.04.180 Supersedeas. The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

No order so restraining or suspending an order of the commission relating to rates, fares, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing, and if a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage.

In case the order of the commission under review is superseded by the court, it shall require a bond, with good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transportation any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporations would have been compelled to pay if the order of the commission had not been suspended.

The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem proper. [1961 c 14 § 81.04.180. Prior: 1933 c 165 § 6; prior: 1931 c 119 § 2; 1911 c 117 § 87; RRS § 10429.]

81.04.190 Appeal to supreme court or court of appeals. The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, prosecute an appeal to the supreme court or the court of appeals of the state of Washington as in other cases. [1971 ex.s. c 107 § 5; 1961 c 14 § 81.04.190. Prior: 1911 c 117 § 88; RRS § 10430.]

Rules of court: Cf. RAP 2.2.

81.04.200 Rehearings before commission. Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: *Provided*, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 81.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

81.04.210 Commission may change orders. The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 81.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

81.04.220 Reparations. When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company

has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount. [1961 c 14 § 81.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

81.04.230 Overcharges—Refund of. When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 81.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

81.04.235 Limitation of actions. All complaints against public service companies for recovery of overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, except as hereinafter provided, and except that if claim for the overcharge has been presented in writing to the public service company within the two-year period of limitation, said period shall be extended to include six months from the time notice in writing is given by the public service company to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

If on or before expiration of the two-year period of limitation for the recovery of overcharges, a public service company begins action under RCW 81.28.270 for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

All complaints against public service companies for the recovery of damages not based on overcharges shall be filed with the commission within six months from the time the cause of action accrues except as hereinafter provided.

The six-month period of limitation for recovery of damages not based on overcharges shall be extended for a like period and under the same conditions as prescribed for recovery of overcharges. If the six-month period for recovery of damages not based on overcharges has expired at the time action is commenced under RCW 81.28.270 for recovery of charges with respect to the same transportation service, or, without beginning such action, charges are collected with respect to that

service, complaints therefor shall be filed with the commission within ninety days from the commencement of such action or the collection of such charges by the carrier. [1963 c 59 § 4; 1961 c 14 § 81.04.235. Prior: 1955 c 79 § 5.]

81.04.236 When cause of action deemed to accrue.

The cause of action for the purposes of RCW 81.04.235, 81.04.240, and 81.28.270 shall be deemed to accrue: (a) In respect of a shipment of property, upon delivery or tender of delivery thereof by the carrier, and not after; (b) in respect of goods or service or services other than a shipment of property, upon the rendering of an invoice or statement of charges by the public service company, and not after.

The provisions of this section shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue. [1961 c 14 § 81.04.236. Prior: 1955 c 79 § 6.]

81.04.240 Action in court on reparations and overcharges.

If the public service company does not comply with the order of the commission for the payment of damages or overcharges within the time limited in the order, action may be brought in any superior court where service may be had upon the company to recover the amount of damages or overcharges with interest. The commission shall certify and file its record in the case, including all exhibits, with the clerk of the court within thirty days after such action is started and the action shall be heard on the evidence and exhibits introduced before the commission and certified to by it.

If the complainant shall prevail in the action, the court shall enter judgment for the amount of damages or overcharges with interest and shall allow complainant a reasonable attorney's fee, and the cost of preparing and certifying the record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, said sums to be fixed and collected as a part of the costs of the action.

If the order of the commission is found contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive.

The court may remand any action which is reversed by it to the commission for further action.

Appeals to the supreme court shall lie as in other civil cases. Action to recover damages or overcharges shall be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided. [1961 c 14 § 81.04.240. Prior: 1955 c 79 § 4; 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

81.04.250 Determination of rates. The commission has the power upon complaint or upon its own motion to prescribe and authorize just and reasonable rates for the transportation of persons or property by carriers other than railroad companies, and shall exercise that power whenever and as often as it deems necessary or proper. The commission shall, before any hearing is had upon the complaint or motion, notify the complainants and the carrier concerned of the time and place of the hearing by giving at least ten days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of prescribing and authorizing the rates. The notice is sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

In exercising this power the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.

In the exercise of this power the commission may give consideration, in addition to other factors, to the following:

(1) To the effect of the rates upon movement of traffic by the carriers;

(2) To the public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of the facilities, equipment and service; and

(3) To the carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost (including all operating expenses, depreciation accruals, rents, and taxes of every kind) of providing adequate transportation service, plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit to the carrier. The relation of carrier expenses to carrier revenues may be deemed the proper test of a reasonable profit.

This section does not apply to railroad companies, which shall be regulated in this regard by chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 3; 1961 c 14 § 81.04.250. Prior: 1951 c 75 § 1; 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

Severability—1984 c 143: See RCW 81.34.900.

81.04.260 Summary proceedings. Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of

the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. An appeal may be taken to the supreme court or the court of appeals from such final judgment in the same manner and with the same effect as appeals from judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of appeal, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1971 c 81 § 143; 1961 c 14 § 81.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

81.04.270 Merchandise accounts to be kept separate. Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. [1961 c 14 § 81.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

81.04.280 Purchase and sale of stock by employees. No public service company shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; nor shall any public service company by any means or device require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any public service company require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any

purchase or contract to purchase any security of such public service company or of any other person or corporation. [1961 c 14 § 81.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

81.04.290 Sales of stock to employees and patrons. A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and patrons any increase of its capital stock, or part thereof, without first offering it to existing stockholders: *Provided*, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 81.04.290. Prior: 1955 c 79 § 7; 1923 c 110 § 1; RRS § 10344-1.]

81.04.300 Budgets to be filed by companies—
Supplementary budgets. The commission may regulate, restrict, and control the budgets of expenditures of public service companies. Each company shall prepare a budget showing the amount of money which, in its judgment, will be needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed with the commission it shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [1961 c 14 § 81.04-300. Prior: 1959 c 248 § 15; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.310 Commission's control over expenditures. The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commission may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within sixty days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated

at any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereunder are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1961 c 14 § 81.04.310. Prior: 1959 c 248 § 16; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.320 Budget rules and regulations. The commission may prescribe the necessary rules and regulations to place RCW 81.04.300 through 81.04.330 in operation. It may by general order, exempt in whole or in part from the operation thereof companies whose gross operating revenues are less than twenty-five thousand dollars a year. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable, any portion of any original or supplementary budget relating to proposed capital expenditures. [1961 c 14 § 81.04.320. Prior: 1959 c 248 § 17; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.330 Effect of unauthorized expenditures—Emergencies. Any public service company may make or contract for any rejected item of expenditure, but in such case the same shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: *Provided*, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure therefor free from the operation of RCW 81.04.300 through 81.04.330.

Any finding and order entered by the commission shall be in effect until vacated and set aside in proper proceedings for review thereof. [1961 c 14 § 81.04.330. Prior: 1959 c 248 § 18; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.350 Depreciation and retirement accounts. The commission shall have power after hearing to require any or all public service companies to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the

rate and amount theretofore charged by the company for depreciation or retirement.

The commission shall have and exercise like power and authority over all other reserve accounts of public service companies. [1961 c 14 § 81.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

81.04.360 Excessive earnings to reserve fund. If any public service company earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings shall have been invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [1961 c 14 § 81.04.360. Prior: 1959 c 285 § 3; 1933 c 165 § 14; RRS § 10458-8.]

81.04.380 Penalties—Violations by public service companies. Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 81.04.380. Prior: 1911 c 117 § 94; RRS § 10443.]

81.04.385 Penalties—Violations by officers, agents, and employees of public service companies. Every officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1961 c 14 § 81.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 81.04.390, part.]

81.04.387 Penalties—Violations by other corporations. Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be

subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 81.04.400. [1961 c 14 § 81.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 81.04.380, part.]

81.04.390 Penalties—Violations by persons. Every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, violates any provision of this title, or fails to observe, obey, or comply with any order made by the commission under this title, so long as the same is or remains in force, or who procures, aids, or abets any such corporation in its violation of this title, or in its failure to obey, observe, or comply with any such order, is guilty of a gross misdemeanor, except that a violation pertaining to equipment on motor carriers transporting hazardous material is a misdemeanor. [1980 c 104 § 5; 1961 c 14 § 81.04.390. Prior: 1911 c 117 § 97; RRS § 10446.]

81.04.400 Actions to recover penalties—Disposition of fines, fees, penalties. Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 241; 1969 ex.s. c 199 § 38; 1961 c 14 § 81.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

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

81.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees thereof. In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission, and every person or corporation violating the provisions of any cease and desist order issued pursuant to RCW 81.04.510, shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of

this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1973 c 115 § 2; 1963 c 59 § 3.]

81.04.410 Orders and rules conclusive. In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 81.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

81.04.420 Commission intervention where order or rule is involved. In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial, the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 81.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

81.04.430 Findings of department prima facie correct. Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by

the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 81.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

81.04.440 Companies liable for damages. In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [1961 c 14 § 81.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

81.04.450 Certified copies of orders, rules, etc.—Evidentiary effect. Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 81.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

81.04.460 Commission to enforce public service laws—Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his presence any provision of this title, or any rule or regulation adopted by the commission: *Provided*, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated such person shall be a peace officer and a police officer for the purposes herein mentioned. [1961 c 173 § 2; 1961 c 14 § 81.04.460. Prior: 1911 c 117 § 101; RRS § 10450.]

81.04.470 Rights of action not released—Penalties cumulative. This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other: *Provided*, That no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting livestock by railway from liability of a common carrier, or carrier of livestock which would exist had no contract, receipt, rule or regulation been made or entered into. [1961 c 14 § 81.04.470. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 81.04.470 and 81.04.480.]

81.04.490 Application to municipal utilities. Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any street railroad owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. [1961 c 14 § 81.04.490. Prior: 1911 c 117 § 105; RRS § 10454.]

81.04.500 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 81.04.500. Prior: 1911 c 117 § 5; RRS § 10341.]

81.04.510 Engaging in business or operating without approval or authority—Procedure. Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him books, records, accounts and other memoranda, and give testimony under oath as to his operations or acts, and the burden shall rest upon such person or corporation of proving that his operations or acts are

not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

In proceedings under this section no person or corporation shall be excused from testifying or from producing any book, waybill, document, paper or account before the commission when ordered to do so, on the ground that the testimony or evidence, book, waybill, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person or corporation shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any account, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence in proceedings under this section: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. [1973 c 115 § 15.]

Chapter 81.08 SECURITIES

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81.08.010 Definition. The term "public service company", as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title: *Provided*, That it shall not include any such company the issuance of stocks and securities of which is subject to regulation by the Interstate Commerce Commission: *Provided further*, That it shall not include any "motor carrier" as that

term is defined in RCW 81.80.010 or any "garbage and refuse collection company" subject to the provisions of chapter 81.77 RCW. [1981 c 13 § 3; 1965 ex.s. c 105 § 3; 1961 c 14 § 81.08.010. Prior: 1959 c 248 § 3; 1957 c 205 § 2; 1953 c 95 § 9; prior: 1933 c 151 § 1, part; RRS § 10439-1, part.]

81.08.012 "Evidence of indebtedness"—Limitation of term. The term "evidence of indebtedness," as used in this chapter, shall not include conditional sales contracts or purchase money chattel mortgages. [1961 c 14 § 81.08.012. Prior: 1951 c 227 § 2.]

81.08.020 Control vested in state. The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 81.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

81.08.030 Authority to issue. A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than twelve months after the date thereof, for the following purposes only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 81.08.030. Prior: 1953 c 95 § 10; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

81.08.040 Application for authority—Hearing—Joint action. Application for authorization to issue such stocks and stock certificates or other evidence of interest or ownership, and bonds, notes or other evidences of indebtedness shall be made to the commission stating the amount, character, terms and purpose of each proposed issue thereof, and stating such other pertinent details as the commission may require.

To enable it to determine whether it will issue such order, the commission may hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents and

contracts, and require the filing of such data as it may deem of assistance. The commission may by its order grant permission for the issuance of such stocks or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary.

If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public service company within such other state, then the commission shall have the power to agree with such commission or other agency or agencies of such other state on the issuance of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes or other evidences of indebtedness by a public service company owning or operating a public utility both in such state and in this state, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue a joint certificate of such approval: *Provided, however,* That no such joint approval shall be required in order to express the consent to and approval of such issue by the state of Washington if said issue is separately approved by the commission.

The public service company making the application may have the decision or order of the commission reviewed in the courts in the same manner and by the same procedure as any other order or decision of the commission, when the public service company shall deem such decision or order to be in any respect or manner improper, unjust or unreasonable. [1961 c 14 § 81.08-.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

81.08.050 Use of proceeds limited. No public service company shall, without the consent of the commission, apply the issue of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof. [1961 c 14 § 81.08.050. Prior: 1933 c 151 § 5; RRS § 10439-5.]

81.08.060 Short term notes excepted. A public service company may issue notes, except demand notes, for proper purposes and not in violation of any provision of this chapter, or any other law, payable at periods of not more than twelve months after the date of issuance, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness, without the consent of the commission. [1961 c 14 § 81.08.060. Prior: 1959 c 248 § 22; prior: 1937 c 30 § 2, part; 1933 c 151 § 6, part; RRS § 10439-6, part.]

81.08.070 Fee schedule. Each public service company making application to the commission for authority to issue stock and stock certificates or other evidence of interest or ownership and bonds, notes or other evidence of indebtedness, shall pay to the commission the following fees: For each order authorizing an issue of bonds, notes or other evidence of indebtedness, one dollar for each one thousand dollars of the principal amount of the authorized issue or fraction thereof up to one million dollars, and fifty cents for each one thousand dollars over one million dollars and up to ten million dollars, and ten cents for each one thousand dollars over ten million dollars, with a minimum fee in any case of ten dollars; for each order authorizing an issue of stock, stock certificates, or other evidence of interest or ownership, one dollar for each one thousand dollars of the par or stated value of the authorized issue or fraction thereof up to one million dollars, and fifty cents for each one thousand dollars over one million dollars and up to ten million dollars, and ten cents for each one thousand dollars over ten million dollars, with a minimum fee in any case of ten dollars: *Provided,* That only twenty-five percent of the specified fees need be paid on any issue or on such portion thereof as may be used to guarantee, take over, refund, or discharge any stock issue or stock certificates, bonds, notes or other evidence of interest, ownership or indebtedness on which a fee has theretofore been paid: *Provided further,* That if the commission modifies the amount of the issue requested and the applicant elects not to avail itself of the authorization, no fee need be paid. All fees collected under this section shall be paid at least once each month to the state treasurer and deposited in the public service revolving fund. [1961 c 14 § 81.08.070. Prior: 1959 c 248 § 23; prior: 1953 c 95 § 11; 1937 c 30 § 2, part; 1933 c 151 § 6, part; RRS § 10439-6, part.]

81.08.080 Capitalization of franchises or merger contracts prohibited. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 81.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

81.08.090 Accounting for disposition of proceeds. The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and

necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 81.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

81.08.100 Unauthorized and nonconforming issues void. All stock and every stock certificate or other evidence of interest or ownership, and every bond, note or other evidence of indebtedness, of a public service company, issued without an order of the commission authorizing the same then in effect shall be void, and likewise all stock and every stock certificate or other evidence of interest or ownership, and every bond, note or other evidence of indebtedness, of a public service company, issued with the authorization of the commission, but not conforming in substance in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. [1961 c 14 § 81.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

81.08.105 Unauthorized and nonconforming issues void—Issues after effective date of chapter 151, Laws of 1933 based upon corporate authority prior to said date. All stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness issued by any public service company after chapter 151, Laws of 1933 takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of chapter 151, Laws of 1933, shall be void, unless an order of the commission authorizing the issuance of such stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness shall have been obtained from the commission prior to such issue; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

For the purposes of this section "commission" shall mean the utilities and transportation commission or such body as shall have succeeded to the powers and duties thereof. [1983 c 4 § 11; 1961 c 14 § 81.08.105. Prior: 1933 c 151 § 10; RRS § 10439-10.]

81.08.110 Penalty against companies. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the same, or contrary to the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the commission's order, as herein provided or to any purpose specified in the commission's order in excess of the amount in said order authorized for such purpose shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation of any such order, rules, direction, demand or requirement of the department, or of any provision of this chapter, shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission or failure of such public service company. [1961 c 14 § 81.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

81.08.120 Penalty against individuals. Every officer, agent or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the same, or contrary to the provisions of this chapter, or who, in any proceedings before the commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation which said statement or representation so made, filed or caused to be filed may tend in any way to influence the commission to make an order authorizing the issuance of any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order, or who, with knowledge that any false statement or representation was made to the commission in any proceedings tending in any way to influence the commission to make such order, issues or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or who, with

knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter negotiates, or causes the same to be negotiated, shall be guilty of a gross misdemeanor. [1961 c 14 § 81.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

81.08.130 Permit to assume liability as guarantor, etc. No public service company shall henceforth assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, without having first secured from the commission an order authorizing it so to do. Every such assumption made other than in accordance with the order of the commission authorizing the same shall be void. [1961 c 14 § 81.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

81.08.140 State not obligated. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter. [1961 c 14 § 81.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

Chapter 81.12

TRANSFERS OF PROPERTY

Sections

81.12.010	Definition.
81.12.020	Order required to sell, merge, etc.
81.12.030	Disposal without authorization void.
81.12.040	Authority required to acquire property or securities of company.
81.12.050	Rules and regulations.
81.12.060	Penalty.

81.12.010 Definition. The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title: *Provided*, That it shall not include common carriers subject to regulation by the Interstate Commerce Commission: *Provided further*, That it shall not include motor freight carriers subject to the provisions of chapter 81.80 RCW or garbage and refuse collection companies subject to the provisions of chapter 81.77 RCW: *Provided further*, That nothing contained in this chapter shall relieve public service companies from the necessity for compliance with the provisions of RCW 81.80.270. [1981 c 13 § 4; 1969 ex.s. c 210 § 4; 1965 ex.s. c 105 § 4; 1963 c 59 § 5; 1961 c 14 § 81.12.010. Prior: 1953 c 95 § 12; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

81.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: *Provided*, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a public utility district. [1961 c 14 § 81.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

81.12.030 Disposal without authorization void. Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. [1961 c 14 § 81.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

81.12.040 Authority required to acquire property or securities of company. No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 81.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

81.12.050 Rules and regulations. The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 81.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

81.12.060 Penalty. The provisions of RCW 81.04.380 and 81.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 81.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

Chapter 81.16
AFFILIATED INTERESTS

Sections

81.16.010	Definitions.
81.16.020	Dealings with affiliated interests must be approved.
81.16.030	Payments to affiliated interest disallowed if not reasonable.
81.16.040	Satisfactory proof, what constitutes.
81.16.050	Commission's control is continuing.
81.16.060	Summary order on nonapproved payments.
81.16.070	Summary order on payments after disallowance.
81.16.080	Court action to enforce orders.
81.16.090	Review of orders.

81.16.010 Definitions. As used in this chapter, the term "public service company" shall include every corporation engaged in business as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

As used in this chapter, the term "affiliated interest," means:

Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [1969 ex.s. c 210 § 5; 1961 c 14 § 81.16.010. Prior: 1953 c 95 § 13; 1933 c 152 § 1, part; RRS § 10440-1, part.]

81.16.020 Dealings with affiliated interests must be approved. No contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to such affiliated interests, except open account advances from or to a common carrier subject to the provisions of part one of the interstate commerce act, shall be valid or effective unless and until such contract or arrangement shall have received

the approval of the commission. It shall be the duty of every public service company to file with the commission, a verified copy or a verified summary of any such unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to March 18, 1933 and in force and effect at that time. The commission shall approve such contract or arrangement hereafter made or entered into only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest; otherwise the contract or arrangement shall not be approved. The commission shall not be required to approve any such contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein. [1961 c 14 § 81.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 1; Rem. Supp. 1941 § 10440-2.]

81.16.030 Payments to affiliated interest disallowed if not reasonable. In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of such public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with such affiliated interest unless such public service company shall establish the reasonableness of such payment or compensation. In such proceeding the commission shall disallow such payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such proceeding any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service above described. [1961 c 14 § 81.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

81.16.040 Satisfactory proof, what constitutes. No proof shall be satisfactory, within the meaning of RCW 81.16.010 through 81.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: *Provided, however,* That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 81.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

81.16.050 Commission's control is continuing. The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein

described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest. [1961 c 14 § 81.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

81.16.060 Summary order on nonapproved payments. Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having received the commission's approval, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the commission. [1961 c 14 § 81.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

81.16.070 Summary order on payments after disallowance. Whenever the commission shall find upon investigation that any public service company is making payments to an affiliated interest, although such payments have been disallowed and disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company from treating such payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the commission. [1961 c 14 § 81.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

81.16.080 Court action to enforce orders. The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 81.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

81.16.090 Review of orders. Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 81.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

Chapter 81.20

INVESTIGATION OF PUBLIC SERVICE COMPANIES

Sections

81.20.010	Definition.
81.20.020	Cost of investigation may be assessed against company.
81.20.030	Interest on unpaid assessment—Action to collect.
81.20.040	Commission's determination of necessity as evidence.
81.20.050	Order of commission not subject to review.
81.20.060	Limitation on frequency of investigations.

81.20.010 Definition. As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the utilities and transportation commission under the provisions of this title or Title 22 RCW. [1961 c 14 § 81.20.010. Prior: 1953 c 95 § 14; 1939 c 203 § 1; RRS § 10458-6.]

81.20.020 Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 81.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

81.20.030 Interest on unpaid assessment—Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing

of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 81.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

81.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 81.20.020 through 81.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 81.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

81.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 81.20.020 through 81.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 81.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

81.20.060 Limitation on frequency of investigations. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in other circumstances and conditions affecting rates and services. [1961 c 14 § 81.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

Chapter 81.24 REGULATORY FEES

Sections

81.24.010	Companies to file reports of gross revenue and pay fees—General.
81.24.020	Fees of auto transportation companies.
81.24.030	Fees of steamboat companies.
81.24.050	Fees to approximate reasonable cost of regulation.
81.24.060	Intent of legislature—Regulatory cost records to be kept by commission.
81.24.070	Disposition of fees.
81.24.080	Penalty for failure to pay fees—Disposition of fees and penalties.

Corporations, annual license fees of public service companies: RCW 23A.40.070.

Gross weight fees, motor freight carriers: RCW 81.80.320.

Highway user tax structure: Chapter 46.85 RCW.

Mileage fees on auto stages: RCW 46.16.125.

81.24.010 Companies to file reports of gross revenue and pay fees—General. Every company subject to regulation by the commission, except auto transportation companies, steamboat companies, wharfingers or warehousemen, motor freight carriers, and storage warehousemen shall, on or before the first day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue: *Provided*, That the fee shall in no case be less than one dollar.

The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows: Railroad, express, sleeping car, and toll bridge companies shall constitute class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in. [1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

81.24.020 Fees of auto transportation companies. Every auto transportation company shall, between the first and fifteenth days of January, April, July and October of each year, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding three months, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: *Provided*, That the fee paid shall in no case be less than two dollars and fifty cents.

The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which such fees are due. [1961 c 14 § 81.24.020. Prior: 1955 c 125 § 5; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

81.24.030 Fees of steamboat companies. Every steamboat company shall, on or before the first day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: *Provided*, That the fee so paid shall in no case be less than five dollars. The percentage rate of gross

operating revenue to be paid in any year may be decreased by the commission by general order entered before March 1st of such year. [1981 c 13 § 5; 1961 c 14 § 81.24.030. Prior: 1955 c 125 § 6; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

81.24.050 Fees to approximate reasonable cost of regulation. In fixing the percentage rates of gross operating revenue to be paid by companies under RCW 81.24.010, 81.24.020, and 81.24.030, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the companies, or classes of companies, covered by each respective section shall be approximately the same as the reasonable cost of supervising and regulating such companies, or classes of companies, respectively. [1983 c 3 § 206; 1961 c 14 § 81.24.050. Prior: 1955 c 125 § 8; prior: (i) 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part. (ii) 1937 c 158 § 2, part; RRS § 10417-1, part. (iii) 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part. (iv) 1939 c 123 § 2, part; 1937 c 158 § 3, part; RRS § 10417-2, part. (v) 1949 c 124 § 1, part; Rem. Supp. 1949 § 10417-2, part.]

81.24.060 Intent of legislature—Regulatory cost records to be kept by commission. It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 81.24.060. Prior: 1937 c 158 § 7; RRS § 10417-5.]

81.24.070 Disposition of fees. All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by him deposited to the public service revolving fund. [1961 c 14 § 81.24.070. Prior: 1937 c 158 § 6; RRS § 10417-4.]

81.24.080 Penalty for failure to pay fees—Disposition of fees and penalties. Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 242; 1979 ex.s. c 198

§ 2; 1961 c 14 § 81.24.080. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

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

Chapter 81.28

COMMON CARRIERS IN GENERAL

Sections

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Charges, prohibition against discrimination: State Constitution Art. 12 § 15.

Common carrier may bridge state waterway: RCW 79.91.110.

Constitutional limitations generally: State Constitution Art. 12.

Department of transportation as common carrier: RCW 47.60.220.

Free transportation to public officers prohibited: State Constitution Art. 2 § 39.

Legislature may establish maximum rates for transportation: State Constitution Art. 12 § 18.

Lien for transportation, storage, etc.: Chapter 60.60 RCW.

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

Municipal transportation systems: Title 35 RCW.

Regulation of common carriers: State Constitution Art. 12 § 13.

81.28.010 Duties as to rates, services, and facilities. All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

Every common carrier shall construct, furnish, maintain and provide, safe, adequate and sufficient service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employees and the public.

All rules and regulations issued by any common carrier affecting or pertaining to the transportation of persons or property shall be just and reasonable. [1961 c 14 § 81.28.010. Prior: 1911 c 117 § 9; RRS § 10345.]

81.28.020 Duty of carriers and shippers to expedite traffic. Every common carrier shall under reasonable rules and regulations promptly and expeditiously receive, transport and deliver all persons or property offered to or received by it for transportation. All persons receiving cars for loading shall promptly and expeditiously load the same, and all persons receiving property shall promptly and expeditiously receive and remove the same from the cars and freight rooms. [1961 c 14 § 81.28.020. Prior: 1911 c 117 § 10; RRS § 10346.]

81.28.030 Routing of freight—Connecting companies—Damages. All transportation companies doing business wholly or in part within this state shall, upon receipt of any article of freight, promptly forward the same to its marked destination, by the route directed by the shipper, or if no directions are given by shipper, then to any connecting company whose line or route reaches nearest to the point to which such freight is marked.

Any transportation company failing to comply with this section shall be liable for any damages that may be sustained, either to the shipper or consignee, from any cause, upon proof that said damages resulted on account of a failure of the transportation company to comply with this section.

Suit for damages may be instituted either at the place of shipping or destination, either by the shipper or consignee, and before any court competent and qualified to hear and determine like causes between individuals resident of the district in which said court is holding. [1961 c 14 § 81.28.030. Prior: (i) 1890 p 291 § 1; RRS § 10491. (ii) 1890 p 291 § 2; RRS § 10492. (iii) 1890 p 291 § 3; RRS § 10493.]

81.28.040 Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules. Every common carrier shall file with the commission and shall print and keep open for public inspection, schedules showing the rates, fares, charges, and classification for the transportation of persons and property within the state between each point upon the carrier's route and all other points thereon; and between each point upon its route and all points upon every route leased, operated, or controlled by it; and between each point on its route or upon any route leased, operated, or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers participating in the through route shall file, print, and keep open for public inspection, the separately established rates, fares, charges, and classifications that apply to the through transportation. The schedules printed shall plainly state the places between which property and persons will be carried, shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges that the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations that may in any way change,

affect, or determine any part, or the aggregate of, such rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. The schedule shall be plainly printed in large type, and a copy of it shall be kept by every carrier readily accessible to inspection by the public in every station or office of the carrier where passengers or property are respectively received for transportation, when the station or office is in charge of any agent. All or any of the schedules kept as provided in this section shall be immediately produced by the carrier for inspection upon the demand of any person. A notice printed in bold type and stating that the schedules are on file with the agent and open to inspection by any person and that the agent will assist any person to determine from the schedules any transportation rates or fares or rules or regulations that are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of each schedule shall be prescribed by the commission.

The commission has power, from time to time, to determine and prescribe by order such changes in the form of the schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting, and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. This section does not apply to rail transportation contracts regulated by RCW 81.34.070 or to railroad services or transactions exempted under RCW 81.34.110. [1984 c 143 § 4; 1961 c 14 § 81.28.040. Prior: 1911 c 117 § 14; RRS § 10350.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.050 Tariff changes—Statutory notice—Exception. Unless the commission otherwise orders, no change may be made in any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier other than a rail carrier, except after thirty days' notice to the commission and to the public. The notice shall be published as provided in RCW 81.28.040 and shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes shall be shown by printing, filing, and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. In the case of a change proposed by a rail carrier, except for changes to rail contracts between a rail carrier and a shipper authorized under RCW 81.34.070, which changes become effective in accordance with that section, a proposal resulting in a rate increase or a new rate shall not become effective for twenty days after the notice is published, and a proposal resulting in a rate decrease shall not become effective for ten days after the notice is published. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication

time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention shall be directed to the change by some character on the schedule. The character and its placement shall be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made. [1984 c 143 § 5; 1981 c 116 § 1; 1961 c 14 § 81.28.050. Prior: 1957 c 205 § 3; 1911 c 117 § 15; RRS § 10351.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.060 Joint rates, contracts, etc. The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

Every common carrier shall file with the commission copies of every contract, agreement or arrangement with any other common carrier or common carriers relating in any way to the transportation of persons or property. [1961 c 14 § 81.28.060. Prior: 1911 c 117 § 16; RRS § 10352.]

81.28.070 Interstate tariffs. Every common carrier shall print and file or cause to be filed with the commission schedules showing the rates, fare, charges and classifications for the transportation of persons and property between all points within the state and all points without the state upon its route, and between each point within the state and all points without the state upon every route leased, operated or controlled by it, and between each point upon its route within the state and all points without the state upon the route of any common carrier, whenever a through route and joint rate shall have been established between any two such points. If no joint rate over a through route has been established, the carrier operating within this state shall print and file with the commission the separately established rates, fares, charges and classifications applied to the through transportation. The schedules printed aforesaid shall plainly state the places between which property and persons will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges or other charges which the commission may require to be stated, all privileges granted or allowed, and any rules or regulations which may in anywise change, affect or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper or consignee. [1961 c 14 § 81.28.070. Prior: 1911 c 117 § 17; RRS § 10353.]

81.28.080 Published rates to be charged—Exceptions. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping car companies, express companies, and to linemen of telegraph and telephone companies; to railway mail service employees, post office inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from state institutions of learning: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping car companies with other railroad companies, steamboat companies, express companies and sleeping car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided, further*, That this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping car companies: *Provided, further*, That the term "employee" as used in this section shall

include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the surviving spouses prior to remarriage and minor children during minority, of persons who died while in the service of any such common carrier: *And provided, further,* That nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: *And provided, further,* That nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers, or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.

Common carriers subject to the provisions of this title may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

Nothing in this title shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company, where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both of such companies. [1973 1st ex.s. c 154 § 117; 1961 c 14 § 81.28.080. Prior: 1929 c 96 § 1; 1911 c 117 § 18; RRS § 10354. Formerly RCW 81.28.080 through 81.28.130, 81.28.150 through 81.28.170, and 80.36.130.]

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

81.28.180 Rate discrimination prohibited. A common carrier shall not, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of persons or property, except as authorized in this title, than it charges, demands, collects, or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. This section does not apply to railroad companies, which shall be regulated in this regard by chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 6; 1961 c 14 § 81.28.180. Prior: 1911 c 117 § 20; RRS § 10356.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.190 Unreasonable preferences prohibited. A common carrier shall not make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. This section does not apply to railroad companies, which shall be regulated in this regard by chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 7; 1961 c 14 § 81.28.190. Prior: 1911 c 117 § 21; RRS § 10357.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.200 Long and short haul. A common carrier subject to the provisions of this title shall not charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates, subject to the provisions of this title. This shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon application of a common carrier the commission may by order authorize it to charge less for a longer than for a shorter distance for the transportation of persons or property in special cases after investigation by the commission, but the order must specify and prescribe the extent to which the common carrier making the application is relieved from the operation of this section. Only to the extent so specified and prescribed is any common carrier relieved from the operation and requirements of this section. This section does not apply to railroad companies, which shall be regulated in this regard by chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 8; 1961 c 14 § 81.28.200. Prior: 1911 c 117 § 22; RRS § 10358.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.210 Transportation at less than published rates—Rebating. No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall assist, suffer or permit any person or corporation to obtain transportation for any person or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published in accordance with the provisions of this title, by means of false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. No person, corporation, or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state to a common carrier, shall seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor, as

aforesaid, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents or substance of a package, or false report or statement of weight, or by any device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees.

No person, corporation, or any officer, agent or employee, of a corporation, shall knowingly or wilfully, directly or indirectly, by false statement or representation as to the cost, value, nature or extent of injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, knowing the same to be false, fictitious or fraudulent, or to upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate or payment for damage, or otherwise, in connection with or growing out of the transportation of persons or property, or agreement to transport such persons or property, whether with or without the consent or connivance of such common carrier or any of its officers, agents or employees, whereby the compensation of such carrier for such transportation shall be in fact made less than the rates then established and in force therefor.

No person, corporation, or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state to a common carrier, shall seek to obtain or obtain such transportation by any false representation, false statement of false paper or token as to the contents or substance thereof, where the transportation of such property is prohibited by law. [1961 c 14 § 81.28.210. Prior: 1911 c 117 § 23; RRS § 10359.]

81.28.220 Action for treble damages. The attorney general of the state of Washington is authorized and directed, whenever he has reasonable grounds to believe that any person, firm or corporation has knowingly accepted or received from any carriers of persons or property subject to the jurisdiction of the commission, either directly or indirectly, any unlawful rebate, discount, deduction, concession, refund or remittance from the rates or charges filed and open to public inspection as provided for in the public service laws of this state, to prosecute a civil action in the name of the people of the state of Washington in the superior court of Thurston county to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds or remittances so accepted or received within three years prior to the commencement of such action.

All penalties imposed under the provisions of this section shall be paid to the state treasurer and by him deposited in the public service revolving fund. [1961 c 14 § 81.28.220. Prior: 1937 c 169 § 5; RRS § 10447-1.]

81.28.230 Commission to fix just, reasonable, and compensatory rates. Whenever the commission finds, after a hearing had upon its own motion or upon complaint, as provided in this chapter, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier for the transportation of persons or property within the state or in connection therewith, or

that the regulations or practices of the common carrier affecting those rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way are in violation of the provisions of law, or that the rates, fares, or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine and fix by order the just, reasonable, or sufficient rates, fares, or charges, or the regulations or practices to be thereafter observed and enforced. This section does not apply to railroad companies, which shall be regulated in this regard by chapter 81.34 RCW and rules adopted thereunder. [1984 c 143 § 9; 1961 c 14 § 81.28.230. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

Severability—1984 c 143: See RCW 81.34.900.

81.28.240 Commission may order improved facilities and service. Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule. [1961 c 14 § 81.28.240. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

81.28.250 Commission may complain of interstate rates. The commission shall have power, and it is hereby made its duty, to investigate all interstate, rates, fares, charges, classifications or rules or practices in relation thereto, for or in relation to the transportation of persons or property where any act in relation thereto shall take place within this state, and when the same are, in the opinion of the commission, excessive or discriminatory, or are levied or laid in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall apply, by petition, to the interstate commerce commission for relief, and may present to the interstate commerce commission all facts coming to its knowledge as to violations of the rulings, orders or regulations of that commission, or as to violations of the said act to regulate commerce or acts amendatory thereof or supplementary thereto. [1961 c 14 § 81.28.250. Prior: 1911 c 117 § 58; RRS § 10394.]

81.28.260 Bicycles as baggage. Bicycles are hereby declared to be and are deemed baggage, and shall be transported as baggage for passengers by railroad corporations and steamboats, and subject to the same liabilities as other baggage; and no such passenger shall be required to crate, cover, or otherwise protect any such

bicycle: *Provided*, That a railroad corporation or steamboat shall not be required to transport under the provisions of this section more than one bicycle for one person. [1961 c 14 § 81.28.260. Prior: 1899 c 15 § 1; RRS § 10495.]

81.28.270 Limitation of action for collection of transportation charges. All actions at law by railroads, common and contract carriers by motor truck and all other public carriers for recovery of their charges, or any part of them, for any common carrier service performed by said carriers, shall be begun within two years from the time the cause of action accrues, and not after. [1961 c 14 § 81.28.270. Prior: 1945 c 117 § 1; Rem. Supp. 1945 § 167-1.]

81.28.280 Reports of wrecks, etc. Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring on its lines or system, in such manner as the commission may prescribe.

Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice. The commission may require reports to be made by any common carrier of all wrecks, collisions, or derailments occurring on its line. [1961 c 14 § 81.28.280. Prior: 1953 c 104 § 3; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

81.28.290 Investigation of accidents, wrecks. The commission shall investigate all accidents that may occur upon the lines of any common carrier resulting in loss of life, to any passenger or employee, and may investigate any and all accidents or wrecks occurring on the line of any common carrier. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident or wreck and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and they may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [1961 c 14 § 81.28.290. Prior: 1953 c 104 § 4; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

Chapter 81.29

COMMON CARRIERS—LIMITATIONS ON LIABILITY

Sections

81.29.010	Definition.
81.29.020	Carrier's liability for loss—Limitation—Exceptions—Tariff schedule—Time for filing claims or instituting suits.

81.29.030	Carrier's right of action against other carrier.
81.29.040	Penalty for violations.
81.29.050	Liability for baggage limited.

81.29.010 Definition. The term "common carrier" as used in this chapter shall include every individual, firm, copartnership, association or corporation, or their lessees, trustees or receivers, engaged in the transportation of property for the public for hire, whether by rail, water, motor vehicle, air or otherwise. [1961 c 14 § 81.29.010. Prior: 1945 c 203 § 1; Rem. Supp. 1945 § 3673-0. Formerly RCW 81.32.010, part.]

81.29.020 Carrier's liability for loss—Limitation—Exceptions—Tariff schedule—Time for filing claims or instituting suits. Any common carrier receiving property for transportation wholly within the state of Washington from one point in the state of Washington to another point in the state of Washington, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line or lines such property may pass when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier from the liability imposed; and any such common carrier so receiving property for transportation wholly within the state of Washington, or any common carrier delivering said property so received and transported, shall be liable to the lawful holder of said receipt or bill of lading, or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier to which such property may be delivered, or over whose line or lines such property may pass, when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, or regulation, or in any tariff filed with the commission; and any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply: First, to baggage carried on passenger trains, boats, motor vehicles, or aircraft, or trains, boats, motor vehicles, or aircraft carrying passengers; second, to property, except ordinary livestock received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the commission, to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding

the value so declared or released; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided, further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided, further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided, further*, That for the purposes of this section and of RCW 81.29.030 the delivering carrier in the case of rail transportation shall be construed to be the carrier performing the linehaul service nearest to the point of destination, and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this section shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed with the commission. [1982 c 83 § 1; 1980 c 132 § 1; 1961 c 14 § 81.29.020. Prior: 1945 c 203 § 2; 1923 c 149 § 1; Rem. Supp. 1945 § 3673-1. Formerly RCW 81.32-.290 through 81.32.330.]

Effective date—1980 c 132: "This 1980 act shall take effect on July 1, 1980." [1980 c 132 § 4.]

81.29.030 Carrier's right of action against other carrier. The common carrier issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof. [1961 c 14 § 81.29.030. Prior: 1945 c 203 § 3; 1923 c 149 § 2; Rem. Supp. 1945 § 3673-2. Formerly RCW 81.32.340.]

81.29.040 Penalty for violations. Any common carrier subject to the provisions of this chapter, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone, or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or

thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this chapter to be done, or not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof in any court of competent jurisdiction, be subject to a fine of not to exceed five thousand dollars for each offense. [1961 c 14 § 81.29-.040. Prior: 1923 c 149 § 3; RRS § 3673-3. Formerly RCW 81.32.350.]

81.29.050 Liability for baggage limited. The liability of any common carrier subject to regulation by the commission for the loss of or damage to any baggage shall not exceed the sum of two hundred dollars for each trunk and its contents, fifty dollars for each valise, suitcase or traveling bag and its contents, or twenty-five dollars for each box, bundle or package and its contents unless a higher valuation is declared at the time of the delivery of such baggage to the carrier and assented thereto in writing by such carrier: *Provided*, That in the case of the originating carrier the limitation of liability defined in this section shall only apply when the passenger or shipper shall have had constructive notice that the common law liability of such carrier has been so limited. [1961 c 14 § 81.29.050. Prior: 1945 c 209 § 1; Rem. Supp. 1945 § 10495-1. Formerly RCW 81.32.360.]

Chapter 81.34 RAILROADS—STATE AND FEDERAL REGULATION

Sections	
81.34.010	Policy of Interstate Commerce Commission to be followed in certain areas.
81.34.020	Relationship between this chapter and federal law.
81.34.030	Rates—Market dominance.
81.34.040	Rates—Unreasonable discrimination.
81.34.050	Suspension of schedule, classification, rule, or regulation.
81.34.060	Rate increases—Rules—Adjusted base rate.
81.34.070	Contracts for services and rates—Filing—Approval, disapproval.
81.34.080	Contracts for services and rates—Review proceeding.
81.34.090	Limitation of liability.
81.34.100	Rates for recyclable or recycled materials.
81.34.110	Exemptions from chapter.
81.34.900	Severability—1984 c 143.

81.34.010 Policy of Interstate Commerce Commission to be followed in certain areas. In determining whether a rate established by a railroad company is reasonable for purposes of this title, the commission shall follow the Interstate Commerce Commission policy, which provides that railroad companies shall earn adequate revenues. Further, in regulating railroad company rates under this title, the commission has no jurisdiction

over general rate increases, inflation-based rate adjustments, or fuel adjustment surcharges approved by the Interstate Commerce Commission. [1984 c 143 § 10.]

81.34.020 Relationship between this chapter and federal law. The commission shall exercise the authority granted under this chapter to regulate railroads in a manner consistent with the Interstate Commerce Act and in a manner that allows the state of Washington to continue to regulate railroad rates to the maximum extent allowable under federal law and to be certified, in accordance with 49 U.S.C. Sec. 10501 by the federal government to continue such regulation. In compliance with this chapter, the commission, in addition to such other procedures as it may establish, shall administer and follow the provisions of this chapter as nearly as practicable in accordance with the statutes, regulations, and decisions construing federal law. [1984 c 143 § 11.]

81.34.030 Rates—Market dominance. The commission shall use the standards and procedures established in this chapter to determine reasonableness when acting upon any complaint or protest or in any proceeding concerning any railroad's rate or a classification, rule, or practice related to a rate subject to regulation under this chapter. The commission shall adopt rules relating to the determination of market dominance. The rules shall allow rate increases, not subject to suspension, if the rail carrier proposing the increase is found by the commission not to have market dominance. Market dominance is defined as an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies.

When a rate for transportation by a rail carrier is challenged as being unreasonably high, the commission shall not make such a finding until it has determined that there is market dominance and that the rate exceeds a maximum reasonable level for the transportation to which the rate applies. A finding of market dominance does not presumptively establish that the proposed rate exceeds a reasonable maximum. [1984 c 143 § 12.]

81.34.040 Rates—Unreasonable discrimination. (1) A railroad company subject to the jurisdiction of the commission may not charge or receive from a person a different compensation by using a special rate, rebate, drawback, or other means, for a service rendered, or to be rendered, than it charges or receives from another person for performing a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A railroad company that charges or receives such a different compensation for that service engages in unreasonable discrimination.

(2) A railroad company providing transportation or service subject to the jurisdiction of the commission may not subject a person, place, port, or type of traffic to unreasonable discrimination.

(3) Differences of rates, classifications, rules, and practices of railroad companies subject to the jurisdiction of the commission do not constitute a violation of

this section if the differences result from different services provided by rail carriers.

(4) This section does not apply to: (a) Contracts approved under RCW 81.34.070 and 81.34.080; (b) surcharges or cancellations authorized by the Interstate Commerce Commission; (c) separate rates for distinct rail services; (d) rail rates applicable to different routes; or (e) expenses authorized under 49 U.S.C. Sec. 10751 by the Interstate Commerce Commission, except that with respect to rates described in (b), (c), and (d) of this subsection, nothing in this subsection affects the commission's authority under this section with respect to rate relationships between ports or within the same port. [1984 c 143 § 13.]

81.34.050 Suspension of schedule, classification, rule, or regulation. The commission may suspend the filing of a schedule, classification, rule, or regulation by a railroad company only upon complaint and only when it is determined that: (1) It is substantially likely that the protesting party will prevail on the merits; (2) without suspension the proposed change will cause substantial injury to the protesting party; (3) and because of the peculiar economic circumstances of the protesting party the provisions requiring refund of moneys in excess of amounts found to be reasonable do not protect the protesting party.

The suspension period for a proceeding to determine the reasonableness of a filing by a railroad company shall not exceed five months. If the commission has not reached a final decision at the end of the fifth month after the schedule, classification, rule, or regulation was to become effective, it shall, if suspended take effect, and if in effect, remain in effect and not be subject to suspension. If a suspension is not ordered, but an investigation is instituted, the commission shall require the railroad to account for all amounts received under the increase until final determination is made and the proceeding is completed. The accounting shall specify by whom and for whom the amounts are paid. When the commission makes its final determination, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest. If a rate is suspended and any portion of the rate is later found to be reasonable, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services during the period of suspension, plus interest. Interest, if required, shall be paid at a rate equal to the average yield, on the date the statement is filed, of marketable securities of the federal government having a duration of ninety days. [1984 c 143 § 14.]

81.34.060 Rate increases—Rules—Adjusted base rate. (1) The commission shall adopt rules in conformance with 49 U.S.C. Sec. 10707a allowing: (a) Rate increases not subject to suspension based upon an adjusted base rate of rail carriers in this state, including a

cost-adjustment factor; (b) rate increases that do not exceed a specified percentage of the adjusted base rate.

(2) A rate increase under subsection (1)(b) of this section is not subject to suspension except: (a) Upon complaint by an interested party alleging that the rate increase violates the provisions of this chapter; or (b) if the rate increase is equal to or greater than revenue-variable cost percentage limits specified in 49 U.S.C. Sec. 10707a(e).

(3) For the purposes of this chapter "adjusted base rate" has the same meaning with respect to rail carriers in this state as in 49 U.S.C. Sec. 10707a(a). [1984 c 143 § 15.]

81.34.070 Contracts for services and rates—Filing—Approval, disapproval. A railroad company providing transportation of property may enter into a contract with one or more purchasers of that transportation to provide specified services under specified rates and conditions. Contracts, together with summaries of them, shall be filed with the commission under special rules adopted by the commission relating to contents of contracts, summaries of contracts, and other rules relating thereto. Contents of summaries shall contain non-confidential information and shall be available for public inspection.

Contracts filed under this section shall be approved by the commission to be effective at any date determined by the commission within sixty days after the filing of the contract or if not disapproved in a proceeding under this section, sixty days after filing.

A contract may, after hearing, be disapproved if the commission determines that the contract does any of the following:

(1) As to contracts other than contracts for the transportation of agricultural products, forest products, and paper: (a) Upon complaint filed by a shipper, that the contract unduly impairs the ability of the contracting railroad company or railroad companies to meet their common carrier obligations; (b) upon complaint filed by a port, that the contract harms or causes unjust discrimination against such port.

(2) As to contracts for the transportation of agricultural products, including forest products and paper, upon showing of a shipper: (a) That the railroad company unjustly discriminates against the shipper by refusing to enter into a contract with the shipper for rates and services for transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper is ready, willing, and able to enter into the contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or (b) that the railroad company provides rates, services, or other practices that constitute destructive competition. For the purpose of making a determination of what constitutes destructive competition, the commission shall consider the difference between contract rates and published single car rates.

(3) As to contracts that apply only to the transportation of agricultural commodities (including forest products but not including wood pulp, woodchips,

pulpwood, or paper) the contract may be disapproved if it requires the use of more than forty percent of the capacity of the railroad's owned or leased equipment, by major car type, in the performance of the terms of the contract. On request of a railroad or other party or on its own initiative, the commission may grant relief from the limitation, as it considers appropriate, if it determines that the additional equipment may be made available without harming the railroad company's ability to meet its carrier obligations.

A contract that is approved under this section and transportation under the contract may not be subsequently challenged before the commission or in any court on the grounds that the contract violates a provision of this section. The exclusive remedy for any alleged breach of a contract entered into under this section is in an appropriate state or federal court, unless the parties otherwise agree. [1984 c 143 § 16.]

81.34.080 Contracts for services and rates—Review proceeding. The commission may hold a proceeding to review contracts filed under RCW 81.34.070 under the following conditions:

(1) Notwithstanding any other provision of law, the proceedings must begin no later than thirty days after the filing of the contract;

(2) A proceeding may be initiated by the commission, or:

(a) By a shipper to determine whether a contract violates RCW 81.34.070(1)(a) or 81.34.070(2) (a) or (b), but only upon a showing of harm to the shipper;

(b) By a port to determine violation of RCW 81.34.070(1)(b), but only upon a showing of harm to the port;

(c) By any person the commission finds has an interest under RCW 81.34.070(3).

If a proceeding is initiated under this section the commission must determine whether the contract is in violation of RCW 81.34.070 within thirty days after commencement of the proceeding. If the commission finds that the contract is not in violation of RCW 81.34.070, the contract shall become effective. If the commission finds that the contract violates RCW 81.34.070, the commission shall disapprove the contract, unless the contract unjustly discriminates against a shipper as stated in RCW 81.34.070(2)(a), in which case the carrier shall be ordered, subject to RCW 81.34.070, to provide rates and services substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence at the proceeding. [1984 c 143 § 17.]

81.34.090 Limitation of liability. In addition to the liability limitations and exceptions allowed under RCW 81.29.020, a railroad company providing transportation or service subject to jurisdiction of the commission may establish rates for transportation of property under which the liability of the carrier for the property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper

and the carrier, and may provide in the written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of the property. [1984 c 143 § 18.]

81.34.100 Rates for recyclable or recycled materials. Notwithstanding any other provision of law, all railroad companies providing transportation subject to the commission's jurisdiction shall maintain rates for the transportation of recyclable or recycled materials, other than recyclable or recycled iron or steel, at revenue-to-variable-cost ratios that are equal to or less than the average revenue-to-variable-cost ratio that rail carriers would be required to realize, under honest, economical, and efficient management, in order to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return, or both, on capital employed in the business sufficient to attract and retain capital in adequate amounts to provide a sound transportation system. [1984 c 143 § 19.]

81.34.110 Exemptions from chapter. In a matter related to a railroad company providing transportation, the commission shall, upon its own motion or the motion of any interested person, exempt persons, classes of persons, transactions, or service from the provisions of this chapter as the commission determines are appropriate and in the public interest. The commission may begin a proceeding either upon its own motion or upon the motion of any interested person. Exemptions established under this section may be temporary, may be subject to revocation, or may be subject to any other conditions that the commission determines are required in the public interest. [1984 c 143 § 20.]

81.34.900 Severability—1984 c 143. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 143 § 25.]

Chapter 81.36

RAILROADS—CORPORATE POWERS AND DUTIES

Sections

81.36.010	Right of eminent domain.
81.36.020	Right of entry.
81.36.030	Intersections and connections with other roads or canals.
81.36.040	Lines or canals across or along watercourses.
81.36.050	Change of grade or location of road or canal.
81.36.060	Extensions, branch lines.
81.36.070	Purchase, lease, sale, merger of railroads.
81.36.075	Proceedings prior to March 18, 1909, validated.
81.36.090	Requisites to building extension or branch line.
81.36.100	Bridges over navigable streams.
81.36.120	May own securities of irrigation companies.
81.36.130	May construct and operate canals and ditches.

Assessment of private car companies for property tax purposes: Chapter 84.16 RCW.

Consolidation of competing railroads prohibited: State Constitution Art. 12 § 16.

Constitutional limitations, generally: State Constitution Art. 12.

Express companies: State Constitution Art. 12 § 21.

Rights of way over public lands, bridges, etc.: Chapter 79.01 RCW.

Taxation of rolling stock: State Constitution Art. 12 § 17.

81.36.010 Right of eminent domain. Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights-of-way for tunnels beneath the surface of the land, and any elevated rights-of-way above the surface thereof, including lands granted to the state for university, school or other purposes, and also tide and shore lands belonging to the state (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll houses, workshops, materials for construction, excavations and embankments and a right-of-way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the state for university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and bermes thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate a sufficient quantity of any such land, including lands granted to the state for university, schools and other purposes and also tide and shore lands belonging to the state (but not including harbor areas) in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct, and for yards, terminal, transfer and switching grounds, docks and warehouses required for receiving, delivering, storage and handling of freight, and such land, or any interest therein, as may be necessary for the security and safety of the public in the construction, maintenance and operation of its railways; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: *And provided further,* That if such corporation locate the bed of such railway or canal upon any part of the track now occupied by any established state or county road, said corporation shall be responsible to the state or county in which such state or county road so appropriated is located, for all expenses incurred by the state or county in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. [1961 c 14 § 81.36.010. Prior: 1907 c 244 § 1; 1903 c 180 § 1; 1895 c 80 § 2;

1888 p 63 § 2; Code 1881 § 2456; 1869 p 343 § 2; RRS § 10539.]

81.36.020 Right of entry. A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land, real estate or premises, or any of the lands granted to the state of Washington for school, university or other purposes, between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. [1961 c 14 § 81.36.020. Prior: 1895 c 80 § 1; 1888 p 63 § 1; Code 1881 § 2455; 1869 p 34 § 1; RRS § 10538.]

81.36.030 Intersections and connections with other roads or canals. Every corporation formed under the laws of this state for the construction of a railroad shall have the power to cross, intersect, join and unite its railway with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road, and every corporation formed under the laws of this state for the construction of a canal shall have the power to cross and intersect any railway before constructed at any point in its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor; and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of said canal. [1961 c 14 § 81.36.030. Prior: 1895 c 80 § 3; 1888 p 64 § 3; Code 1881 § 2456 1/2; RRS § 10535.]

81.36.040 Lines or canals across or along watercourses. Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, watercourses, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be,

and pay any damages caused by such construction: *Provided*, That the construction of any railway or canal by such corporation along, across or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies, may be exercised by them with reference to canal companies. [1961 c 14 § 81.36.040. Prior: 1895 c 80 § 4; 1888 p 64 § 3; RRS § 10536.]

81.36.050 Change of grade or location of road or canal. Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey and appropriate the necessary lands and materials, as in the original location and construction of such road or canal. [1961 c 14 § 81.36.050. Prior: Code 1881 § 2457; 1869 p 343 § 3; RRS § 10537.]

81.36.060 Extensions, branch lines. Any railroad corporation chartered by, or organized under, the laws of the state, or of any state or territory, or under the laws of the United States, and authorized to do business in this state, may extend its railroads from any point named in its charter or articles of incorporation, or may build branch roads either from any point on its line of road or from any point on the line of any other railroad connecting, or to be connected, with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making any such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall endorse thereon the date of the filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of incorporation. [1961 c 14 § 81.36.060. Prior: 1890 p 526 § 1; RRS § 10460.]

81.36.070 Purchase, lease, sale, merger of railroads.

Any railroad company now or hereafter incorporated pursuant to the laws of this state or of the United States, or of any state or territory of the United States, may at any time by means of subscription to the capital stock of any other railroad company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any such company owning or operating a railroad within or without this state, may extend the same into this or any other state or territory, and may build, buy, or lease the whole or any part of any other railroad, together with the franchises, powers and immunities and all other property and appurtenances appertaining thereto, whether located within or without this state; or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; and any such railroad company may sell or lease the whole or any part of its railroad and branches, within or without this state, constructed or to be constructed, together with all property, rights, privileges, and franchises appertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state, or of any other state or territory of the United States; and any railroad company incorporated or existing under the laws of the United States, or of any state or territory of the United States, may extend, construct, maintain and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point on such extension to any place or places within this state, and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or consolidate with any such railroad in this state, or shall extend or construct its road, or any portion or branch thereof in this state, shall possess and may exercise and enjoy as to the location, control, management and operation of the said road, and as to the location, construction and operation of any extension or branch thereof, all the rights, powers, privileges and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain. Such purchase, sale, consolidation or lease may be made, or such aid furnished upon such terms or conditions as may be agreed upon by the directors and trustees of the respective companies; but, except in the case of sale or lease of branch line railroads, the same shall be approved or ratified by persons holding or representing seventy-five percent of the capital stock of the company so selling or disposing of its stock or bonds, or selling, leasing, or otherwise disposing of its railroad property and appurtenances pertaining thereto, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose, or by the approval in writing of seventy-five percent of the stockholders of such company. Articles stating the name selected for such consolidated corporation and the

terms of such consolidation shall be approved by each corporation by the vote of the stockholders holding seventy-five percent of the stock, in person or by proxy, at a regular meeting thereof or a special meeting called for that purpose in the manner provided by the bylaws of the respective consolidating corporations, or by the consent in writing of such seventy-five percent of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or consent, duly certified by the respective presidents and secretaries, with the corporate seals of such corporations affixed thereto, shall be filed for record in the office of the secretary of state, and a copy thereof be furnished to the commission; and thereupon such consolidating corporations shall be and become one corporation, by the name so selected, which, within this state, shall possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations, and be subject to all the liabilities and restrictions now or hereafter imposed by law: *Provided*, That no railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a competing line, or purchase, either directly or indirectly, any stock or interest in a railroad corporation owning or operating a competing line: *And, provided further*, That nothing in the foregoing provisions shall be held or construed as curtailing the right of this state, or of the counties through which any such road or roads may be located to levy and collect taxes upon the same, and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject, and all roads or branches thereof in this state so consolidated with, purchased or leased, or aided, or extended into this state, shall be subject to taxation and to regulation and control of its operation by the laws of this state in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state or extending its railroad or any portion thereof into or through this state, shall establish and maintain an office or offices in this state, at some point or points on its line, at which legal process and notice may be served as upon railroad corporations of this state: *Provided, further*, That before any railroad corporation organized under the laws of any other state or territory, or of the United States, shall be permitted to avail itself of the benefits of this section and RCW 81.36.075 with respect to any railroad constructed, or to be constructed within this state, such corporation shall file with the secretary of state, a true copy of its charter or articles of incorporation, and otherwise comply with the laws of this state respecting foreign corporations doing business within the state: *Provided*, That any such consolidation shall be approved by the commission: *Provided, further*, That in no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated, at the par value thereof. Any sale or lease of a branch line railroad made in substantial compliance with the provisions of this section prior to April 8, 1926 is hereby legalized and made in all

respects legal and binding from the date of its execution. [1961 c 14 § 81.36.070. Prior: 1925 ex.s. c 188 § 1; 1915 c 136 § 1; 1909 c 196 § 1; 1890 p 526 § 2; RRS § 10463. Formerly RCW 81.36.070 and 81.36.080.]

81.36.075 Proceedings prior to March 18, 1909, validated. Any sale or purchase of, and any consolidation by sale, or otherwise, or any lease, or agreement to sell, consolidate with or lease, the whole or any part of any railroad, or the branch lines of any company, whether organized or located within or without this state, with the franchises appertaining thereto, to, from or with any railroad company organized under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies, executed prior to March 18, 1909 by the proper officers of the respective companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution: *Provided*, That the provisions of this section shall not apply when the railroads or transportation corporations involved are competing lines. [1961 c 14 § 81.36.075. Prior: 1909 c 196 § 2; RRS § 10464.]

81.36.090 Requisites to building extension or branch line. Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall endorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. [1961 c 14 § 81.36.090. Prior: 1890 p 527 § 3; RRS § 10466.]

81.36.100 Bridges over navigable streams. Any railroad corporation heretofore duly incorporated and organized under the laws of this state or of the territory of Washington, or which may hereafter be duly incorporated and organized under the laws of this state, or heretofore or hereafter incorporated and organized under the laws of any other state or territory of the United States, and authorized to do business in this state and to construct and operate railroads therein, shall have and

hereby is given the right to construct bridges across the navigable streams within this state over which the projected line or lines of railway of said railroad corporations will run: *Provided*, That said bridges are constructed in good faith for the purpose of being made a part of the constructed line of said railroad: *And provided*, That they shall be constructed in the course of the construction of said railroad or thereafter for the more convenient operation thereof: *And provided further*, That such bridges shall be so constructed as not to interfere with, impede or obstruct the navigation of such streams. [1961 c 14 § 81.36.100. Prior: 1890 p 53 § 1; RRS § 10468.]

Bridges and trestles across state waterways: RCW 79.91.110, 79.91.120.

Railroad bridges across navigable streams: RCW 79.91.090.

81.36.120 May own securities of irrigation companies. It shall be lawful for any corporation, whether such corporation is organized under the laws of the territory or state of Washington, the laws of any other state or territory, or the laws of the United States owning, leasing or operating any line or lines of railway within the state of Washington, or which may own, lease or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state. [1961 c 14 § 81.36.120. Prior: 1890 p 529 § 1; RRS § 10461.]

81.36.130 May construct and operate canals and ditches. It shall be lawful for any such corporation to build, own and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway. [1961 c 14 § 81.36.130. Prior: 1890 p 529 § 2; RRS § 10462.]

Chapter 81.40

RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections	
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81.40.035	Freight train crews.
81.40.040	Trainmen—Hours of service.
81.40.050	Enforcement.
81.40.060	Purchase of apparel by employees.
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81.40.080	Employee shelters.
81.40.090	Penalty.
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81.40.100	Penalty for employing illiterate engineer—Penalty for illiterate person to act as engineer.
81.40.110	Flagman must read, write, and speak English.
81.40.120	Cost of records or medical examinations—Definitions.
81.40.130	Cost of records or medical examinations—Unlawful to require employee or applicant to pay.
81.40.140	Cost of records or medical examinations—Penalty.

*Industrial insurance, employments covered: Chapter 51.12 RCW.
Intoxication of railway employees: RCW 9.91.020.*

81.40.010 Full train crews—Passenger. It shall be unlawful for any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway, in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, to operate over its road or any part thereof, or suffer or permit to be run over its road outside of the yard limits, any passenger, mail or express train consisting of four or more cars with less than a full passenger crew consisting of five men, to wit: one engineer, one fireman, one conductor, one brakeman and one flagman (said flagman to have had at least one year's experience in train service) and none of the said crew shall be required or permitted to perform the duties of train baggageman or express messenger while on the road. [1961 c 14 § 81.40.010. Prior: 1911 c 134 § 1; RRS § 10486.]

81.40.030 Penalty—Exceptions from requirements—Enforcement. Each train or engine run in violation of RCW 81.40.010 shall constitute a separate offense: *Provided*, That nothing in RCW 81.40.010 and 81.40.030 shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours.

Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who shall violate any of the provisions of RCW 81.40.010 and 81.40.030 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

It shall be the duty of the commission to enforce RCW 81.40.010 and 81.40.030. [1983 c 3 § 207; 1961 c 14 § 81.40.030. Prior: (i) 1911 c 134 § 3; RRS § 10488. (ii) 1911 c 134 § 4; RRS § 10489. (iii) 1911 c 134 § 5; RRS § 10490.]

81.40.035 Freight train crews. No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from manning its freight trains in accordance with collective bargaining agreements or any national or other settlement of train crew size. The size of passenger train crews shall not be affected by *this act. [1967 c 2 § 2 (Initiative Measure No. 233, approved November 8, 1966).]

***Reviser's note:** This act [chapter 2, Laws of 1967], consisting of this section and the repeal of RCW 81.40.020, was Initiative Measure No. 233 adopted by the people November 8, 1966, and declared effective law by proclamation signed by the governor December 8, 1966.

Repeal of conflicting acts: "All acts or parts of acts in conflict with or in derogation of this act are hereby repealed insofar as the same are in conflict with, or in derogation of, this act or any part thereof." [1967 c 2 § 3 (Initiative Measure No. 233, approved November 8, 1966).]

81.40.040 Trainmen—Hours of service. It shall be unlawful for any common carrier by railroad or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train to remain on duty more than twelve consecutive hours, except when by casualty occurring after such employee has started on his trip; or, except by accident or unavoidable delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal; or, to require or permit any such employee who has been on duty twelve consecutive hours to go on duty without having had at least ten hours off duty; or, to require or permit any such employee who has been on duty twelve hours in the aggregate in any twenty-four hour period to continue on duty without having had at least eight hours off duty within the twenty-four hour period. [1977 c 70 § 1; 1961 c 14 § 81.40.040. Prior: 1907 c 20 § 1; RRS § 7652.]

81.40.050 Enforcement. Any such common carrier, or any of its officers or agents violating any of the provisions of RCW 81.40.040 is hereby declared to be guilty of a misdemeanor, and upon conviction thereof shall be liable to a penalty of not less than one hundred or more than one thousand dollars for each and every such violation to be recovered in a suit or suits to be brought by the attorney general; and it shall be the duty of the attorney general to bring such suits upon duly verified information being lodged with him of such violation having occurred, in any superior court; and it shall also be the duty of the commission to fully investigate all cases of the violation of RCW 81.40.040, and to lodge with the attorney general information of any such violation as may come to its knowledge. [1961 c 14 § 81.40.050. Prior: 1907 c 20 § 2; RRS § 7653.]

81.40.060 Purchase of apparel by employees. It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, purser, or other employee, as a condition of his continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment. [1961 c 14 § 81.40.060. Prior: 1907 c 224 § 1; RRS § 10504.]

81.40.070 Penalty. Any railroad or other transportation company doing business in the state of Washington, or any officer, agent or servant thereof, violating any of the provisions of RCW 81.40.060 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [1961 c 14 § 81.40.070. Prior: 1907 c 224 § 1; RRS § 10505.]

81.40.080 Employee shelters. It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all men regularly employed in such work shall be sheltered and protected from rain and other inclement weather: *Provided*, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads. [1961 c 14 § 81.40.080. Prior: 1941 c 238 § 1; Rem. Supp. 1941 § 7666-40.]

81.40.090 Penalty. Any railroad company or officer or agent thereof, or any other person, who shall violate the provisions of RCW 81.40.080, by failing or refusing to comply with its provisions, shall be deemed guilty of a misdemeanor, and each day's failure or refusal to comply with the provisions of RCW 81.40.080 shall be considered a separate offense. [1961 c 14 § 81.40.090. Prior: 1941 c 238 § 2; Rem. Supp. 1941 § 7666-41.]

81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter. The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to railroad trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees. [1961 c 14 § 81.40.095. Prior: 1957 c 71 § 1. Formerly RCW 81.04.162.]

81.40.100 Penalty for employing illiterate engineer—Penalty for illiterate person to act as engineer. Every person who, as an officer of a corporation or otherwise, shall knowingly employ as an engineer or engine driver, to run a locomotive or train on any railway,

any person who cannot read time tables and ordinary handwriting; and every person who, being unable to read time tables and ordinary handwriting, shall act as an engineer or run a locomotive or train on any railway, shall be guilty of a gross misdemeanor. [1961 c 14 § 81.40.100. Prior: 1909 c 249 § 274; RRS § 2526.]

81.40.110 Flagman must read, write, and speak English. Any railroad operating within this state, shall not employ or use as flagman any person or persons who cannot read, write and speak the English language. [1961 c 14 § 81.40.110. Prior: 1907 c 138 § 1, part; 1899 c 35 § 1, part; RRS § 10480, part.]

81.40.120 Cost of records or medical examinations—Definitions. As used in RCW 81.40.120 through 81.40.140:

(1) "Employer" means any common carrier by rail, doing business in or operating within the state, and any subsidiary thereof.

(2) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment. [1961 c 14 § 81.40.120. Prior: 1955 c 228 § 1.]

81.40.130 Cost of records or medical examinations—Unlawful to require employee or applicant to pay. It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment. [1961 c 14 § 81.40.130. Prior: 1955 c 228 § 2.]

81.40.140 Cost of records or medical examinations—Penalty. Any employer who violates the provisions of RCW 81.40.120 through 81.40.140 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. Each violation shall constitute a separate offense. [1961 c 14 § 81.40.140. Prior: 1955 c 228 § 3.]

Chapter 81.44

COMMON CARRIERS—EQUIPMENT

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Excessive steam in boilers, penalty: RCW 70.54.080.

Safety and health, tunnels and underground construction: Chapter 49-.24 RCW.

Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.

Tampering with signals, lights, etc.: RCW 88.08.020.

81.44.010 Commission may order improved facilities.

Whenever the commission shall, after a hearing had upon its own motion or upon complaint, find that, additional tracks, switches, terminals, terminal facilities, stations, motive power or any other property, apparatus, equipment, facilities or device for use by any common carrier in, or in connection with the transportation of persons or property, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission may, after a hearing, either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made. [1961 c 14 § 81.44.010. Prior: 1911 c 117 § 64; RRS § 10400.]

81.44.020 Correction of unsafe or defective conditions—Failure to have walkways and handrails as unsafe or defective condition, when. If upon investigation the commission shall find that the equipment or appliances in connection therewith, or the apparatus, tracks, bridges or other structures of any common carrier are

defective, and that the operation thereof is dangerous to the employees of such common carrier or to the public, it shall immediately give notice to the superintendent or other officer of such common carrier of the repairs or reconstruction necessary to place the same in a safe condition, and may also prescribe the rate of speed for trains or cars passing over such dangerous or defective track, bridge or other structure until the repairs or reconstruction required are made, and may also prescribe the time within which the same shall be made. Or if, in its opinion, it is needful or proper, it may forbid the running of trains or cars over any defective track, bridge or structure until the same be repaired and placed in a safe condition. Failure of a railroad bridge or trestle to be equipped with walkways and handrails may be identified as an unsafe or defective condition under this section after hearing had by the commission upon complaint or on its own motion. The commission in making such determination shall balance considerations of employee and public safety with the potential for increased danger to the public resulting from adding such walkways or handrails to railway bridges: *Provided*, That a railroad company and its employees shall not be liable for injury to or death of any person occurring on or about any railway bridge or trestle if such person was not a railway employee but was a trespasser or was otherwise not authorized to be in the location where such injury or death occurred.

There shall be no appeal from or action to review any order of the commission made under the provisions of this section if the commission finds that immediate compliance is necessary for the protection of employees or the public. [1982 c 141 § 1; 1977 ex.s. c 46 § 1; 1961 c 14 § 81.44.020. Prior: 1911 c 117 § 65; RRS § 10401.]

81.44.031 Safety appliances—Locomotives operated on class 1 railroads. Every locomotive operated on every class 1 railroad within the state of Washington shall be equipped with:

(1) Power driven wheel brakes and appliances for operating the train brake system, so equipped that the engineer on the locomotive drawing such train can control its speed without requiring the brakeman to use hand brakes for that purpose, in operating condition at all times;

(2) Couplers coupling automatically by impact, which can be coupled or uncoupled without the necessity of men going between the locomotive and the locomotive or car to which the same is being coupled or from which it is being uncoupled, and with suitable uncoupling levers;

(3) Proper sill steps and grab irons, and with proper footboards if used in switching service;

(4) Electric headlights of approved design on each end in operating condition at all times;

(5) Except in switching service, a speedometer calibrated in miles per hour, accurate within five miles per hour, and operable at all times: *Provided*, That if a speedometer is determined to be out of calibration or inoperable while the locomotive is enroute, it will be deemed as being in good working order until the locomotive reaches the next terminal where repair facilities

are available or where a locomotive with a working speedometer is available for substitution;

(6) Windshields with fully operable windshield wipers capable of removing rain and snow, and adequate operable defrosters on each lead unit of the locomotive consist.

At least one unit of the leading engine—consist on every railroad in this state shall be equipped as of January, 1977, with one or more colored oscillating lights, visible on all sides of the locomotive for a distance of at least two hundred yards. Said light or lights shall be operated whenever the locomotive is in motion or is stopped on a grade crossing, and may be of any color allowed by law, other than the color of the locomotive's headlight. [1977 ex.s. c 263 § 1.]

81.44.032 Penalties for violating RCW 81.44.031 or tampering with locomotive speedometer lock or recording tape. Any railroad or railway in this state violating any of the provisions of RCW 81.44.031, shall be fined not less than five hundred dollars nor more than one thousand dollars for each violation; each day such condition exists shall constitute a separate violation. In setting the fine for equipment failure, the location of the locomotive at the time of the violation and access to repair facilities shall be taken into consideration. It shall also be a violation of RCW 81.44.031 and this section subject to the same penalty as provided in this section for any railroad employee, except those charged with the duty of installation, maintenance and repair or removal of speedometers to tamper with, adjust or break the lock or alter or remove the speed recording tape therein. [1977 ex.s. c 263 § 2.]

81.44.040 Safety appliances—Cars—Street cars. Each car shall be equipped with couplers coupling automatically, which can be coupled or uncoupled without the necessity of men going between the ends of the cars, with power brakes, with proper hand brakes, sill steps and grab irons, and, where secure ladders and running boards are required, with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders, and with such other appliances necessary for the safe operation of such cars, and the trains containing such cars, as may be prescribed by the commission: *Provided*, That in the loading and hauling of long commodities requiring more than one car, hand brakes may be omitted from all save one of the cars, while they are thus combined for such purpose: *And provided further*, That in the operation of trains not less than eighty-five percent of the cars in such train, which are associated together, shall have their power brakes used and operated by the engineer of the locomotive drawing such train.

Every street car shall be equipped with proper and efficient brakes, steps, grab irons or hand rails, fenders or aprons or pilots, and with such other appliances, apparatus and machinery necessary for the safe operation of such street car as the commission may prescribe. [1961 c 14 § 81.44.040. Prior: 1911 c 117 § 66, part; RRS §

10402, part. Formerly RCW 81.44.040 and 81.64.120, part.]

81.44.050 Power of commission as to appliances. The commission shall, as soon as practicable, after the taking effect of chapter 117, Laws of 1911, designate the number, dimensions, location and manner of application of the appliances provided for in RCW 81.44.031 and 81.44.040, or such as may be prescribed by the commission, and shall give notice of such designation to all railroad companies and street railroad companies subject to the provisions of this title, by such means as the commission may deem proper, and thereafter such number, dimensions, location, and manner of application as designated by the commission shall remain as the standards of equipment to be used on all cars and locomotives subject to the provisions of this title. The commission shall have power to add to, change, or modify said standards of equipment at any time or to provide different standards under different circumstances and conditions: *Provided*, That the commission may, upon full hearing, for good cause, extend the period within which any railroad or street railroad may comply with the provisions of RCW 81.44.031 through 81.44.060 with respect to the equipment of locomotives or cars actually in service on the date of passage of chapter 117, Laws of 1911. The commission is hereby given authority to fix the time within which such modification or change shall become effective or obligatory. After the time so fixed it shall be unlawful to use any car, motor, or locomotive which does not comply with the standards so prescribed by the commission: *Provided*, That when any car, motor, or locomotive shall have been properly equipped as provided in this title, and such equipment shall have become defective or insecure while such car, motor, or locomotive was being used by such railroad company upon its line of railroad, such car, motor, or locomotive may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car, motor, or locomotive can be repaired, without liability for the penalties imposed herein if such movement is necessary to make such repairs, and such repairs cannot reasonably be made except at such repair point. Nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars in revenue trains, or in association with other cars that are commercially used, unless such defective cars contain livestock or perishable freight. [1983 c 3 § 208; 1961 c 14 § 81.44.050. Prior: 1911 c 117 § 66, part; RRS § 10402, part.]

81.44.060 Penalty. It shall be unlawful for any railroad company or street railroad company to use or operate any car, motor, locomotive, or train that is defective, or any car, motor, locomotive, or train upon which any appliance, machinery, or attachment thereto belonging is defective, or to knowingly operate its train over any defective track, bridge, or other structure, excepting in cases of emergency and under proper precautions: *Provided*, That RCW 81.44.031 through 81.44.060

shall not apply to boarding and outfit cars when moved as work trains, or to trains consisting wholly of logging trucks or of logging trucks and a passenger car or caboose at the rear end thereof, or of logging trucks and not to exceed five freight cars at the rear end thereof. [1983 c 3 § 209; 1961 c 14 § 81.44.060. Prior: 1911 c 117 § 66, part; RRS § 10402, part.]

81.44.065 Devolution of powers and duties relative to safety of railroads. The utilities and transportation commission shall exercise all powers and duties in relation to the inspection of tracks, bridges, structures, equipment, apparatus, and appliances of railroads with respect to the safety of employees and the public and the administration and enforcement of all laws providing for the protection of the public and employees of railroads which prior to April 1, 1955 were vested in and required to be performed by the director of labor and industries. [1961 c 14 § 81.44.065. Prior: 1955 c 165 § 1. Formerly RCW 43.53.055.]

81.44.070 Duties of inspector of safety appliances. It shall be the duty of the inspector of tracks, bridges, structures, and equipment, and such deputies as may be appointed, to inspect all equipment, and appliances connected therewith, and all apparatus, tracks, bridges and structures, depots and facilities and accommodations connected therewith, and facilities and accommodations furnished for the use of employees, and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment or appliances connected therewith, rendering the use of such equipment dangerous, immediately report the same to the superintendent of the road on which it is found, and to the proper official at the nearest point where such defect is discovered, describing the defect. Such inspector may, on the discovery of any defect rendering the use of any car, motor or locomotive dangerous, condemn such car, motor or locomotive, and order the same out of service until repaired and put in good working order. He shall, on discovering any track, bridge or structure defective or unsafe in any particular, report such condition to the commission, and, in addition thereto, report the same to the official in charge of the division of such railroad upon which such defect is found. In case any track, bridge or structure is found so defective as to be dangerous to the employees or public for a train or trains to be operated over the same, the inspector is hereby authorized to condemn such track, bridge or structure and notify the commission and the office in charge of the division of such railroad where such defect is found of his action concerning the same, reporting in detail the defect complained of, and the work or improvements necessary to repair such defect. He shall also report to the commission the violation of any law governing, controlling or affecting the conduct of public service companies in this state, as such companies are defined in this title or in Title 80 RCW.

The inspector, or such deputies as may be appointed, shall have the right and privilege of riding on any locomotive, either on freight or passenger trains, or on the

caboose of any freight train, for the purpose of inspecting the track on any railroad in this state: *Provided*, That the engineer or conductor in charge of any such locomotive or caboose may require such inspector to produce his authority, under the seal of the commission, showing that he is such inspector or deputy inspector.

The inspector, or such deputy inspector or inspectors as may be appointed, shall, when required by the commission, inspect any street railroad, gas plant, electrical plant, water system, telephone line or telegraph line, and upon discovering any defective or dangerous track, bridge, structure, equipment, apparatus, machinery, appliance, facility, instrumentality or building, rendering the use of the same dangerous to the public or to the employees of the company owning or operating the same, report the same to the commission, and to the official in charge of such road, plant, system or line. [1961 c 14 § 81.44.070. Prior: 1911 c 117 § 67; RRS § 10403. Formerly RCW 81.44.070 and 81.44.080.]

81.44.085 First aid kits and drinking water—Penalty. Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service, and every car used in passenger service with a first aid kit of a type to be approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully quipped condition: *Provided*, That such kits shall not be required on equipment used exclusively in yard or switching service where such kits are maintained in the yard or terminal.

Each locomotive and caboose shall also be furnished with sanitary cups and sanitary ice-cooled drinking water.

For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

Any person violating any provisions of this section shall be guilty of a misdemeanor. [1969 ex.s. c 210 § 7; 1961 c 14 § 81.44.085. Prior: 1951 c 66 §§ 1, 2, 3.]

Caboose

drinking water facilities: RCW 81.44.097.

fire extinguisher—Type, location, and maintenance: RCW 81.44.0972.

81.44.091 Caboose—Size—Equipment—Application. The provisions of RCW 81.44.091 through 81.44.100 shall apply to all cabooses except when used in yard service or in road service for a distance of not to exceed twenty-five straightaway miles: *Provided*, That RCW 81.44.091 through 81.44.100 shall not apply to logging railways. [1969 ex.s. c 116 § 1.]

81.44.092 Caboose—Minimum length—Construction—Insulation—Cupola. Cabooses shall be at least twenty-four feet in length exclusive of platform and of either cupola or bay window type. Cabooses shall be of metal frame construction, and shall be sufficiently insulated to eliminate track noise above eighty-five decibels in any octave in the speech range. A cupola shall extend inward toward the center line of the car not less

than two and one-half feet from either side of the caboose. [1969 ex.s. c 116 § 2.]

81.44.093 Caboose—Trucks, riding qualities, wheels—Draft gears, minimum travel, minimum capacity. The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall be equipped with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of two and one-half inches and a minimum capacity of eighteen thousand foot-pounds, and shall comply with Association of American Railroads Standard M-901 or its equivalent. [1969 ex.s. c 116 § 3.]

81.44.094 Caboose—Electric lighting—Markers. Electric lighting of at least forty foot-candles shall be provided for the direct illumination of the caboose desk and reading areas and for the lavatory facilities. The caboose marker, or markers, shall be reflectorized or capable of illumination when required. [1969 ex.s. c 116 § 4.]

81.44.095 Caboose—Glass, glazing materials of safety glass type. Wherever glass or glazing materials are used in partitions, doors, windows or wind deflectors, they shall be of the safety glass type. [1969 ex.s. c 116 § 5.]

81.44.096 Caboose—Stanchions, grab handles, or bars, installation—Edges and protrusions rounded—Seat backs, standard. Stanchions, grab handles or bars shall be installed at entrances, exits and cupola within convenient reach of employees moving within the caboose. All edges and protrusions (including all bench, desk, chair and other furnishings) shall be rounded as required by the Washington utilities and transportation commission. All seat backs shall conform to safety standards designed by the U.S. department of transportation in its "Federal Motor Vehicle Safety Standards" Motor Vehicle Safety Standard No. 201. [1969 ex.s. c 116 § 6.]

81.44.097 Caboose—Drinking water facilities. Drinking water facilities shall be installed and maintained to provide cool, clean, sanitary drinking water. This water shall be provided in sanitary containers and refrigerated. Each container shall be equipped with an approved type of fountain, faucet, or other dispenser. [1969 ex.s. c 116 § 7.]

81.44.0971 Caboose—Facilities for washing hands and face. Facilities for the washing of hands and face shall be maintained separately from drinking facilities. [1969 ex.s. c 116 § 8.]

81.44.0972 Caboose—Fire extinguisher—Type, location, and maintenance. All cabooses shall be equipped with at least one portable foam, dry chemical, or carbon dioxide type fire extinguisher with a minimum capacity of one and one-quarter gallons or five pounds. Such extinguishers shall be placed in readily accessible

locations and shall be effectively maintained. [1969 ex.s. c 116 § 9.]

81.44.098 Caboose—No violation when move in service if correction made at first available point—Temporary exemption, procedure, limitations. In the event a failure of required equipment or standards of maintenance occurs after a caboose has commenced a move in service after being reported in accordance with RCW 81.44.0981, the railroad operating that caboose shall not be deemed in violation of RCW 81.44.091 through 81.44.100 if said failure of equipment or standards of maintenance is corrected at the first point at which maintenance supplies are available, or, in case of repairs, the first at which materials and repair facilities are available and repairs can reasonably be made. If, in any particular case, any temporary exemption from any requirements of RCW 81.44.091 through 81.44.100 is deemed necessary by a carrier concerned, the utilities and transportation commission will consider the application of such carrier for temporary exemption and may grant such exemption when accompanied by a full statement of the conditions existing and the reasons for the exemption. Any exemptions so granted will be limited to the particular case specified, and will be limited to a stated period of time. [1969 ex.s. c 116 § 10.]

81.44.0981 Caboose—Register for report of failures—Regulations for use of. A register for the reporting of failures of required equipment or standards of maintenance shall be maintained on all cabooses. Said register shall contain sufficient space to record the dates and particulars of said failure. The railroads shall provide reasonable regulations for the use of this register, including a provision for maintaining this record of reported failures for not less than the previous eighty day period. [1969 ex.s. c 116 § 11.]

81.44.0982 Caboose—Compliance, when—Standard for compliance. Compliance with RCW 81.44.091 through 81.44.100 shall be accomplished within five years of August 11, 1969. The requirements stated in RCW 81.44.091 through 81.44.100 shall be deemed complied with by equipment or standards of maintenance equal or superior to those herein prescribed. [1969 ex.s. c 116 § 12.]

81.44.099 Caboose—Regulation and enforcement—Regulations for. The utilities and transportation commission shall be empowered to regulate and enforce all sections of RCW 81.44.091 through 81.44.100, and shall be empowered to enact all reasonable regulations for the enforcement of RCW 81.44.091 through 81.44.100. [1969 ex.s. c 116 § 13.]

81.44.100 Penalty. Any person, corporation or company operating any railroad or railway in this state, violating any of the provisions of RCW 81.44.091 through 81.44.100, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars, nor more than one thousand dollars, for

each offense. [1969 ex.s. c 116 § 14; 1961 c 14 § 81.44-.100. Prior: 1909 c 31 § 2; RRS § 10484.]

81.44.101 Track motor cars—Windshield and canopy required. Every person, firm or corporation operating or controlling any railroad running through or within this state as a common carrier shall, on or before January 1, 1952, equip each of its track motor cars with:

(1) A windshield and a device for wiping rain, snow and other moisture therefrom, which device shall be maintained in good order and so constructed as to be controlled or operated by the operator of said track motor car;

(2) A canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow or other inclement weather. [1961 c 14 § 81.44.101. Prior: 1951 c 42 § 1.]

81.44.102 Track motor cars—Absence of windshield or canopy unlawful. It shall be unlawful after January 1, 1952, for any person, firm or corporation, operating or controlling any common carrier railroad running through or within this state to operate or use any track motor car which is not equipped with a windshield and canopy or top as provided in RCW 81.44.101. [1961 c 14 § 81.44.102. Prior: 1951 c 42 § 2.]

81.44.103 Track motor cars—Head and tail lights required. Every person, firm or corporation operating or controlling any railroad running as a common carrier through or within the state shall, on or before January 1, 1952, equip each of its track motor cars used during the period from thirty minutes before sunset to thirty minutes after sunrise, with an electric headlight of such construction and with sufficient candle power to render plainly visible at a distance of not less than three hundred feet in advance of such track motor car, any track obstruction, landmark, warning sign or grade crossing, and further shall equip such track motor car with a red rear electric light of such construction and with sufficient candle power as to be plainly visible at a distance of three hundred feet. [1961 c 14 § 81.44.103. Prior: 1951 c 42 § 3.]

81.44.104 Track motor cars—Absence of lights unlawful. It shall be unlawful after January 1, 1952, for any person, firm or corporation operating or controlling any railroad running as a common carrier through or within this state to operate or use any track motor car from thirty minutes before sunset to thirty minutes after sunrise, which is not equipped with lights of the candle power, construction and utility described in RCW 81.44.103. [1961 c 14 § 81.44.104. Prior: 1951 c 42 § 4.]

81.44.105 Track motor cars—Penalty for violation. Every violation of RCW 81.44.101 through 81.44-.105 is a misdemeanor and shall be punishable by a fine of not more than one hundred dollars. [1961 c 14 § 81.44.105. Prior: 1951 c 42 § 5.]

81.44.110 Equipment is part of cars—Tare weight. The stakes, standards, supports, stays, railings and other

equipments, appliances and contrivances necessary to effectually and suitably equip and supply every and all flat cars, and cars belonging to any and every railroad company, or person engaged in the business of carrying for hire in this state shall constitute and be held considered part and parcel of said cars, and the weight of same shall be added to the weight of the cars, and shall be deducted from the weight of the cargo, commodity, or product shipped on any and all such flat car or cars so that the freight charges shall be charged by the carrier only on the cargo, commodity or product carried. [1961 c 14 § 81.44.110. Prior: 1907 c 218 § 1; RRS § 10470.]

81.44.120 Reimbursement of shipper for supplying equipment. Whenever any railroad company or any person engaged in the business of carrying for hire in this state shall set in or furnish any person or persons any flat car or cars that is, or are not, provided with stakes, standards, supports, stays, railings and other equipments, appliances and contrivances necessary to effectually and suitably equip and supply every and all such flat car or cars for the purpose of loading and transporting goods, commodities or products, and it shall be necessary and requisite that the shipper or loader of any goods, commodities or products shall furnish any stakes, standards, supports, stays, railings and other equipments, appliances and contrivances necessary to effectually and suitably equip and supply such flat car or cars for the purpose of transporting any goods, commodities or products, the carrier or railroad company, or person engaged in the business of carrying for hire, shall pay to the shipper or loader of any such flat car or cars the cost and expense of placing on any and all of such flat car or cars stakes, standards, supports, stays, railings or other equipments, appliances, and contrivances necessary to effectually and suitably equip or supply every and all such flat car or cars. [1961 c 14 § 81.44.120. Prior: 1907 c 218 § 2; RRS § 10473.]

81.44.130 Safeguarding frogs, switches, and guard rails. Every railroad and street railroad operating in this state shall so adjust, fill, block and securely guard all frogs, switches and guard rails so as to protect and prevent the feet of persons being caught therein. [1961 c 14 § 81.44.130. Prior: 1911 c 117 § 68; RRS § 10404.]

81.44.150 Track scale—Testing. It shall be the duty of all railroads operating in this state, to provide suitable facilities for the testing of all track scales used by such railroads. The commission is hereby authorized, after a hearing, upon its own motion and after notice to the railroads operating in this state, to order a suitable car or other device or facility to be provided by the railroad companies operating in this state, to be used in testing the track scales used by such railroads, the expenses of providing such car, device or facility to be equitably and reasonably apportioned among the different railroad companies by the commission. Such car, device or facility shall be used by the commission to test the accuracy of all track scales, and the different railroad companies shall transport and move such car, device or

facility without charge therefor, to the different places designated by the commission under such reasonable rules and regulations as the commission may prescribe. Such car, device or facility may be used in adjoining states to test the scales of railroad companies and for that purpose may be taken beyond the limits of the state under such reasonable rules and regulations for the due care and return thereof as the commission may prescribe. The commission is hereby authorized to prescribe and collect a reasonable fee sufficient to cover the cost and expenses connected therewith for the inspection and testing of all scales. [1961 c 14 § 81.44.150. Prior: 1911 c 117 § 19; RRS § 10355.]

81.44.160 Regulations for weighing. The commission shall have power to enforce reasonable regulations for the weighing of cars and freight offered for shipment over any line of railroad, and to test the weights made by any railroad and scales used in weighing freight on cars. [1961 c 14 § 81.44.160. Prior: 1911 c 117 § 60; RRS § 10396.]

Chapter 81.48

RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

81.48.010	Failure to ring bell—Penalty.
81.48.020	Obstructing or delaying train—Penalty.
81.48.030	Speed within cities and at grade crossings may be regulated.
81.48.040	Procedure to fix speed limits—Change in limits.
81.48.050	Trains to stop at railroad crossings.
81.48.060	Penalty for violation of duty endangering safety.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.

81.48.010 Failure to ring bell—Penalty. Every engineer driving a locomotive on any railway who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities), or to continue the ringing of such bell or sounding of such whistle until such locomotive shall have crossed such road or street, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.010. Prior: 1909 c 249 § 276; RRS § 2528.]

81.48.020 Obstructing or delaying train—Penalty. Every person who shall wilfully obstruct, hinder or delay the passage of any car lawfully operated upon any railway, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.020. Prior: 1909 c 249 § 278; RRS § 2530.]

81.48.030 Speed within cities and at grade crossings may be regulated. The right to fix and regulate the speed of railway trains within the limits of code cities, cities of the second class, third class, towns, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is

vested exclusively in the commission: *Provided*, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns. [1973 c 115 § 3; 1971 ex.s. c 143 § 1; 1961 c 14 § 81.48.030. Prior: 1943 c 228 § 1; Rem. Supp. 1943 § 10547-1.]

81.48.040 Procedure to fix speed limits—Change in limits. After due investigation and within a reasonable time after June 9, 1943, the commission shall make and issue an order fixing and regulating the speed of railway trains within the limits of cities of the second class, cities of the third class, and towns. The speed limit to be fixed by the commission shall be discretionary, and it may fix different rates of speed for different cities and towns, which rates of speed shall be commensurate with the hazard presented and the practical operation of the trains. The commission shall also fix and regulate the speed of railway trains at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns when in the judgment of the commission the public safety so requires; such speed limit to be fixed shall be discretionary with the commission and may be different for different grade crossings and shall be commensurate with the hazard presented and the practical operation of trains. The commission shall have the right from time to time, as conditions change, to either increase or decrease speed limits established under RCW 81.48.030 and 81.48.040. [1971 ex.s. c 143 § 2; 1961 c 14 § 81.48.040. Prior: 1943 c 228 § 2; Rem. Supp. 1943 § 10547-2.]

81.48.050 Trains to stop at railroad crossings. All railroads and street railroads, operating in this state shall cause their trains and cars to come to a full stop at a distance not greater than five hundred feet before crossing the tracks of another railroad crossing at grade, excepting at crossings where there are established signal towers, and signal men, interlocking plants or gates. [1961 c 14 § 81.48.050. Prior: 1911 c 117 § 69; RRS § 10405.]

81.48.060 Penalty for violation of duty endangering safety. Every engineer, motorman, gripman, conductor, brakeman, switch tender, train dispatcher or other officer, agent or servant of any railway company, who shall be guilty of any wilful violation or omission of his duty as such officer, agent or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.060. Prior: 1909 c 249 § 277; RRS § 2529.]

Chapter 81.52

RAILROADS—RIGHTS OF WAY—SPURS— FENCES

Sections

81.52.010	Physical connections.
81.52.020	Sidetrack and switch connections, duty to construct.

- 81.52.030 Sidetrack and switch connection may be ordered by commission.
 81.52.040 Spur tracks.
 81.52.050 Fences—Crossings—Cattle guards.
 81.52.060 Fences—Liability for injury to stock.
 81.52.070 Fences—Negligence, evidence of.

Eminent domain by corporations: Chapter 8.20 RCW.

Forest protection: Chapter 76.04 RCW.

Public lands, rights of way, easements, etc.: Chapter 79.01 RCW.

81.52.010 Physical connections. Whenever the commission shall find, after a hearing made upon complaint or upon its own motion, that the public necessities and conveniences would be subserved by having track connections made, between any two or more railroads at any of the points hereinafter specified, the commission shall order any two or more railroads of the same or similar gauge to make physical connections at any and all crossings, and at all points where a railroad shall begin or terminate at or near any other railroad, and at or near all towns or cities, so that the cars of any such railroad company may be speedily transferred from one railroad to another, and shall order whether the expense thereof shall to be borne jointly or otherwise. [1961 c 14 § 81.52.010. Prior: 1919 c 153 § 1; 1911 c 117 § 61; RRS § 10397.]

81.52.020 Sidetrack and switch connections, duty to construct. A railroad company upon the application of any shipper shall construct, maintain and operate upon reasonable terms a switch connection or connections with a lateral line of railway or private side track owned, operated or controlled by such shipper, and shall upon the application of any shipper, provide upon its own property a side track and switch connection with its line of railway, whenever such a side track and switch connection is reasonably practicable, and can be put in with safety and the business therefor is sufficient to justify the same. [1961 c 14 § 81.52.020. Prior: 1911 c 117 § 13; RRS § 10349.]

81.52.030 Sidetrack and switch connection may be ordered by commission. Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that application has been made by any shipper for a switching connection or connections with a lateral line of railway or private side track owned, operated or controlled by such shipper, or that application has been made by any shipper for the installation of a side track upon the property of such railroad, and that such switch connection or side track is reasonably practicable, can be put in with reasonable safety, and the business therefor is sufficient to justify the same, and that the railroad company has refused to install or provide the same, the commission shall enter its order requiring such connection or the construction of such side track: *Provided*, That such shipper so to be served shall pay the legitimate cost and expense of constructing such connection or side track as shall be determined in separate items by the commission, and before the railroad company shall be compelled to incur any cost in connection therewith the same shall be secured to

the railroad company in such manner as the commission may require. Whenever such lateral line of railway private side track or side track upon the property of the railroad company shall be constructed under the provisions of this section, any person or corporation shall be entitled to connect therewith or use the same upon the payment to the shipper incurring the primary expense of a reasonable proportion of the cost thereof, to be determined by the commission after notice to the interested parties: *Provided*, That such connection can be made without unreasonable interference with the right of such shipper incurring the primary expense. [1961 c 14 § 81.52.030. Prior: 1911 c 117 § 62; RRS § 10398.]

81.52.040 Spur tracks. Any railroad corporation organized under the laws of this state or of any other state, and authorized to do business in this state and owning or operating a railway in this state, may construct, maintain and operate public spur tracks, from its railroad or any branch thereof, to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock or other industry or enterprise, with all side tracks, storage tracks, wyes, turnouts, and connections necessary or convenient to the use of the same; and such company may acquire by purchase or condemnation, in the manner provided by the laws of this state for the acquisition of real estate for railway purposes, all necessary rights of way for such spur tracks, side tracks, storage tracks, wyes, turnouts and connections; said spur when constructed to be a public spur for the use of all industries located or thereafter located thereon: *Provided*, That the right to acquire by condemnation herein granted shall not be exercised over unimproved lands for a greater distance than five miles, or over improved lands for a greater distance than one mile, or over lands within the limits of a municipal corporation for a greater distance than one-fourth of a mile: *Provided further*, That this section shall not be construed as limiting the rights granted under RCW 81.36.060 through 81.36.090, relating to the construction of branch lines. [1961 c 14 § 81.52.040. Prior: 1907 c 223 § 1; RRS § 10465.]

81.52.050 Fences—Crossings—Cattle guards. Every person, company or corporation having the control or management of any railroad shall, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right of way of such person, company or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle guard: *Provided*, That any person holding land on both sides of said right of way shall have the right to put in gates for his own use at such places as may be convenient. [1961 c 14 § 81.52.050. Prior: 1907 c 88 § 1; RRS § 10507.]

81.52.060 Fences—Liability for injury to stock.

Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattle guard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done. [1961 c 14 § 81.52.060. Prior: 1907 c 88 § 2; RRS § 10508.]

81.52.070 Fences—Negligence, evidence of. In all actions against persons, companies or corporations, operating steam or electric railroads in the state of Washington, for injury to stock by collision with moving trains, it is prima facie evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a sufficient cattle guard at the place where the stock was injured or killed. [1961 c 14 § 81.52.070. Prior: 1907 c 88 § 3; RRS § 10509.]

Chapter 81.53**RAILROADS—CROSSINGS**

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81.53.420	Traffic control devices during construction, repair, etc. of crossing or overpass—Rules.
81.53.900	Effective date—1975 1st ex.s. c 189.

Counties, signs, signals, etc.: RCW 36.86.040.

Railroad intersections, crossings, etc.: State Constitution Art. 12 § 13.
Traffic devices required by utilities and transportation commission: RCW 47.36.050.

81.53.010 Definitions. The term "commission," when used in this chapter, means the utilities and transportation commission of Washington.

The term "highway," when used in this chapter, includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public places actually open and in use, or to be opened and used, for travel by the public.

The term "railroad," when used in this chapter, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs and sidings used in connection therewith. The said term shall not include street railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this chapter, includes every corporation, company, association, joint stock association, partnership or person, its, their or his lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad, as that term is defined in this section.

The term "over-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "grade crossing," when used in this chapter, means any point or place where a railroad crosses a

highway or a highway crosses a railroad or one railroad crosses another, at a common grade. [1961 c 14 § 81.53.010. Prior: 1959 c 283 § 2; prior: (i) 1913 c 30 § 1; RRS § 10511. (ii) 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

81.53.020 Grade separation required where practicable. All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: *Provided*, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. [1961 c 14 § 81.53.020. Prior: 1913 c 30 § 2; RRS § 10512. Formerly RCW 81.52.090.]

81.53.030 Petition for crossing—Hearing—Order. Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent

time, that the railroad company shall install and maintain proper signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Washington state department of transportation. [1984 c 7 § 373; 1961 c 14 § 81.53.030. Prior: 1959 c 283 § 1; 1955 c 310 § 3; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.100.]

Severability—1984 c 7: See note following RCW 47.01.141.

81.53.040 Supplemental hearing—Change of route. If the commission finds that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing and hold a supplemental hearing thereon. At least ten days' notice of the time and place of the supplemental hearing shall be given to all landowners that may be affected by the proposed change in location of the highways. At the supplemental hearing the commission shall inquire into the propriety and necessity of changing and deflecting the highway as proposed. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing, the commission shall enter its findings in writing, and shall determine the location of the crossing which may be constructed, and whether it shall be an under-crossing, over-crossing or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. [1961 c 14 § 81.53.040. Prior: 1955 c 310 § 4; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.110.]

81.53.050 Requirements of order on change of route. If the commission finds and determines that a change in route of an existing highway, or vacation of a portion thereof, is necessary or advisable, it shall further find and determine what private property or property rights it is necessary to take, damage, or injuriously affect for the purpose of constructing the highway along a new route, and what private property or property rights, will be affected by the proposed vacation of a portion of an existing highway. The property and property rights

found necessary to be taken, damaged, or affected shall be described in the findings with reasonable accuracy. In any action brought to acquire the right to take or damage any such property or property rights, the findings of the commission shall be conclusive as to the necessity therefor. A copy of the findings shall be served upon all parties to the cause. [1961 c 14 § 81.53.050. Prior: 1955 c 310 § 5; 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.120.]

81.53.060 Petition for alteration of crossing—
Closure of grade crossing without hearing, when. The mayor and city council, or other governing body of any city or town, or the legislative authority of any county within which there exists any under-crossing, over-crossing, or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing over-crossing, under-crossing, or grade crossing, or a change in the location of an existing highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change the crossing from grade or to close and discontinue the crossing, the opening of an additional crossing for the partial diversion of travel, and praying that this relief may be ordered. If the existing or proposed crossing is on a state road, highway, or parkway, the petition may be filed by the secretary of transportation or the state parks and recreation commission. Upon the petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than twenty days' notice to the petitioner, the railroad company, and the municipality or county in which the crossing is situated. If the highway involved is a state highway or parkway, like notice shall be given to the secretary of transportation or the state parks and recreation commission. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, twenty days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage, or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause notice of the hearing to be published once in a newspaper of general circulation in the community where the crossing is situated, which publication shall appear at least two days before the date of hearing. At the time and place fixed in the notice, all persons and parties interested are entitled to be heard and introduce evidence. In the case

of a petition for closure of a grade crossing the commission may order the grade crossing closed without hearing where: (1) Notice of the filing of the petition is posted at, or as near as practical to, the crossing; (2) notice of the filing of the petition is published once in a newspaper of general circulation in the community or area where the crossing is situated, which publication shall appear within the same week that the notice referred to in subsection (1) of this section is posted; and (3) no objections are received by the commission within twenty days from the date of the publication of the notice. [1984 c 7 § 374; 1969 ex.s. c 210 § 8; 1961 c 14 § 81.53.060. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.130.]

Severability—1984 c 7: See note following RCW 47.01.141.

81.53.070 Hearing. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary: *Provided*, That in an emergency where a highway is relocated to avoid a grade crossing, or a new crossing is constructed in the vicinity of an existing crossing in the interest of public safety, the commission may order such existing crossing closed without notice or hearing as specified herein. In case the order made requires that private lands, property, or property rights be taken, damaged or injuriously affected, the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided.

Any petition herein authorized may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company. [1961 c 14 § 81.53.070. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.140.]

81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings. After February 24, 1937, no building, loading platform, or other structure which will tend to obstruct the vision of travelers on a highway or parkway, of approaching railway traffic, shall be erected or placed on railroad or public highway rights of way within a distance of one hundred feet of any grade crossing located outside the corporate limits of any city or town unless authorized by the commission, and no

trains, railway cars or equipment shall be spotted less than one hundred feet from any grade crossing within or without the corporate limits of any city or town except to serve station facilities and existing facilities of industries.

The commission shall have the power to specify the minimum vertical and horizontal clearance of under-crossings constructed, repaired or reconstructed after February 24, 1937, except as to primary state highways. [1969 ex.s. c 210 § 9; 1961 c 14 § 81.53.080. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.150.]

81.53.090 Duty to maintain crossings. When a highway crosses a railroad by an over-crossing or under-crossing, the framework and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road or parkway, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads and parkways.

The railings of over-crossings shall be considered a part of the roadway. Whenever a highway intersects a railroad at common grade, the roadway approaches within one foot of the outside of either rail shall be maintained and kept in repair by highway authority, and the planking or other materials between the rails and for one foot on the outside thereof shall be installed and maintained by the railroad company. At crossings involving more than one track, maintenance by the railroad company shall include that portion of the crossing between and for one foot on the outside of each outside rail. The minimum length of such planking or other materials shall be twenty feet on installation or repairs made after February 24, 1937. [1961 c 14 § 81.53.090. Prior: 1937 c 22 § 3; 1913 c 30 § 5; RRS § 10515. Formerly RCW 81.52.160.]

81.53.091 Underpasses, overpasses constructed with aid of federal funds—Apportionment of maintenance cost between railroad and state. See RCW 47.28.150.

81.53.100 Cost when railroad crosses highway. Whenever, under the provisions of this chapter, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this section, shall be paid by the railroad company. [1961 c 14 § 81.53.100. Prior: 1937 c 22 § 4A; 1925 ex.s. c 73 § 1A; 1921 c 138 § 2A; 1913 c 30 § 6A; RRS § 10516A. Formerly RCW 81.52.170.]

81.53.110 Cost when highway crosses railroad. Whenever, under the provisions of this chapter, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade crossing, an overcrossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights of way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road or parkway. [1961 c 14 § 81.53.110. Prior: 1937 c 22 § 4B; 1925 ex.s. c 73 § 1B; 1921 c 138 § 2B; 1913 c 30 § 6B; RRS § 10516B. Formerly RCW 81.52.180.]

81.53.120 Cost when railroad crosses railroad. Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing, or grade crossing required or permitted by this chapter or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county or to the state, and the expense of constructing and maintaining such signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned between said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given. [1961 c 14 § 81.53.120. Prior: 1937 c 22 § 4C; 1925 ex.s. c 73 § 1C; 1921 c 138 § 2C; 1913 c 30 § 6C; RRS § 10516C. Formerly RCW 81.52.190.]

81.53.130 Apportionment of cost. In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in RCW 81.53.100 through 81.53.120, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work

may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights of way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located; or in the case of a state road or parkway, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads or parkways. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall review or appeal from any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court, the court of appeals, or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another. [1971 c 81 § 144; 1961 c 14 § 81.53.130. Prior: 1937 c 22 § 5; 1913 c 30 § 7; RRS § 10517. Formerly RCW 81.52.200.]

81.53.140 Time for performance. The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: *Provided*, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission. [1961 c 14 § 81.53.140. Prior: 1913 c 30 § 10; RRS § 10520. Formerly RCW 81.52.210.]

81.53.150 Practice and procedure. Modes of procedure under this chapter, unless otherwise provided in this chapter, shall be as provided in other provisions of this title. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this chapter. [1961 c 14 § 81.53.150. Prior: 1913 c 30 § 11; RRS § 10521. Formerly RCW 81.52.220.]

81.53.160 Service of process. All notices required to be served by this chapter shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving post office shall be sufficient proof of service. When, under the provisions of this chapter, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice. [1961 c 14 § 81.53.160. Prior: 1913 c 30 § 12; RRS § 10522. Formerly RCW 81.52.230.]

81.53.170 Review and appeal. Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this chapter, except as otherwise provided, may be reviewed in the superior court of the county wherein the crossing is situated, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in this title for the review of the commission's orders generally. An appeal may be taken to the supreme court or the court of appeals from the judgment of the superior court in like manner as provided in said utilities and transportation commission law for appeals to the supreme court or the court of appeals. [1971 c 81 § 145; 1961 c 14 § 81.53.170. Prior: 1937 c 22 § 6; 1913 c 30 § 13; RRS § 10523. Formerly RCW 81.52.240.]

81.53.180 Eminent domain. Whenever to carry out any work undertaken under this chapter it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided:

(1) In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the

right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this chapter or the requirements of any order of the commission.

(2) In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

(3) In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the state of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: *Provided*, That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted. [1961 c 14 § 81.53-.180. Prior: 1913 c 30 § 15; RRS § 10525. Formerly RCW 81.52.250.]

81.53.190 Abatement of illegal crossings. If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this chapter, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located. [1961 c 14 § 81.53.190. Prior: 1913 c 30 § 16; RRS § 10526. Formerly RCW 81.52.260.]

81.53.200 Mandamus to compel performance. If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to

perform or discharge any duty required of it or them under this chapter or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon request of the commission. [1961 c 14 § 81.53.200. Prior: 1913 c 30 § 17; RRS § 10527. Formerly RCW 81.52.270.]

81.53.210 Penalty. If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this chapter, or any order of the commission made under it, such company shall be liable to a penalty not to exceed five thousand dollars, such penalty to be recovered in a civil action brought in the name of the state of Washington by the attorney general. All penalties recovered shall be paid into the state treasury. [1961 c 14 § 81.53.210. Prior: 1913 c 30 § 18; RRS § 10528. Formerly RCW 81.52.280.]

81.53.220 Obstructions in highways. Whenever, to carry out any work ordered under RCW 81.53.010 through 81.53.281 and 81.54.010, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted: *Provided*, That, in case of a state highway the same shall be placed only at such points on such state highway as may be approved by the state secretary of transportation and fixed after such approval by order of the commission. [1983 c 3 § 210; 1961 c 14 § 81.53-.220. Prior: 1925 ex.s. c 179 § 2; 1913 c 30 § 19; RRS § 10529. Formerly RCW 81.52.290.]

81.53.230 No new right of action conferred. Nothing contained in this chapter shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this chapter. [1961 c 14 § 81.53.230. Prior: 1913 c 30 § 20; RRS § 10530.]

81.53.240 Scope of chapter. Except to the extent necessary to permit participation by first class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, chapter 81.53 RCW is not operative within the limits of first class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a street car line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation. [1984 c 7 § 375; 1969 c 134 § 8; 1961 c 14 § 81.53.240. Prior: (i) 1953 c 95 § 15; 1925 ex.s. c 179 § 3; 1913 c 30 § 21; RRS § 10531. (ii) 1959 c 283 § 7. Formerly RCW 81-.52.300 and 81.52.380.]

Severability—1984 c 7: See note following RCW 47.01.141.

81.53.250 Employment of experts. The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this chapter; the expense thereof shall be paid by the railroad upon the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this chapter.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this chapter. [1961 c 14 § 81.53.250. Prior: 1937 c 22 § 7; 1913 c 30 § 14; RRS § 10524. Formerly RCW 81.52.330.]

81.53.261 Crossing signals, warning devices—Petition, motion—Hearing—Order—Costs, apportionment of—Records not evidence for actions—Appeal. Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: *Provided*, That upon agreement by all parties to

waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas and appeal as provided in RCW 81.04.170 through 81.04.190, respectively.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [1982 c 94 § 1; 1969 c 134 § 1.]

Application—1982 c 94: "The provisions of this act shall not apply to those petitions acted upon by the commission prior to July 10, 1982." [1982 c 94 § 5.]

Reviser's note: The term "this act" refers to the amendment by 1982 c 94 of RCW 81.53.261, 81.53.271, 81.53.281, and 81.53.295.

81.53.271 Crossing signals, warning devices—Petition, contents—Apportionment of installation and maintenance costs. The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, both installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

Installation: (1) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

(2) Thirty percent to the city, town, county, or state; and

(3) Ten percent to the railroad:

Provided, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

Maintenance: (1) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

(2) Seventy-five percent to the railroad:

Provided, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. [1982 c 94 § 2; 1975 1st ex.s. c 189 § 1; 1973 1st ex.s. c 77 § 1; 1969 c 134 § 2.]

Application—1982 c 94: See note following RCW 81.53.261.

81.53.275 Crossing signals, warning devices—Apportionment when funds not available from grade crossing protective fund. In the event funds are not available from the grade crossing protective fund, the commission shall apportion to the parties on the basis of the benefits to be derived by the public and the railroad, respectively, that part of the cost which would otherwise be assigned to the fund: *Provided*, That in such instances the city, town, county or state shall not be assessed more than sixty percent of the total cost of installation on other than federal aid designated highway projects: *And provided further*, That in such instances the entire cost of maintenance shall be apportioned to the railroad. [1969 ex.s. c 281 § 18; 1969 c 134 § 7.]

81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Created—Transfer of funds—Allocation of costs, procedure—Federal funding—Recovery of costs—Report on status of fund. There is hereby created in the state treasury a "grade crossing protective fund," to which shall be transferred all moneys appropriated for the purpose of carrying out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295. At the time the commission makes each allocation of cost to said

grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are not involved, the railroad shall, upon completion of the installation of any such signal or other protective device and related work, present its claim for reimbursement for the cost of installation and related work from said fund of the amount allocated thereto by the commission. The annual cost of maintenance shall be presented and paid in a like manner. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work. The commission is hereby authorized to recover administrative costs from said fund in an amount not to exceed three percent of the direct appropriation provided for any biennium, and in the event administrative costs exceed three percent of the appropriation, the excess shall be chargeable to regulatory fees paid by railroads pursuant to RCW 81.24.010.

Within ninety days of the end of each fiscal year, the commission shall report to the legislative transportation committee, and the senate and house committees on transportation, the status of the grade crossing protective fund, including revenue sources, fund balances, and expenditures.

The office of financial management shall direct the state treasurer to transfer to the motor vehicle fund an amount not to exceed \$1,331,000 from the grade crossing protective fund for the 1987-89 fiscal biennium. [1987 c 257 § 1; 1985 c 405 § 509; 1982 c 94 § 3; 1975 1st ex.s. c 189 § 2; 1973 c 115 § 4; 1969 c 134 § 3.]

Severability—1985 c 405: See note following RCW 9.46.100.

Application—1982 c 94: See note following RCW 81.53.261.

81.53.291 Crossing signals, warning devices—Operational scope—Election by first class cities, procedure. RCW 81.53.261 through 81.53.291 shall be operative within the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether RCW 81.53.261 through 81.53.291 shall apply. Such election shall be made by the filing by such city of a petition as provided for in RCW 81.53.261 with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others. [1969 c 134 § 4.]

81.53.295 Crossing signals, warning devices, etc.—Federal funds used to pay installation costs—Grade crossing protective fund, state and local authorities to pay remaining installation costs—Railroad to pay maintenance costs. Whenever federal-aid highway funds are available and are used to pay a portion of the cost of installing a grade crossing protective device, and related

work, at a railroad crossing of any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay ten percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. [1982 c 94 § 4; 1975 1st ex.s. c 189 § 3.]

Application—1982 c 94: See note following RCW 81.53.261.

81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required. Whenever any railroad company engages in the construction, maintenance, or repair of a crossing or overpass, the company shall install and maintain traffic control devices adequate to protect the public and railroad employees, subject to the requirements of RCW 81.53.410 and 81.53.420. [1977 ex.s. c 168 § 1.]

81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions. All traffic control devices used under RCW 81.53.400 shall be subject to the following conditions:

(1) Any traffic control devices shall be used at a repair or construction site only so long as the devices are needed or applicable. Any devices that are no longer needed or applicable shall be removed or inactivated so as to prevent confusion;

(2) All barricades, signs, and similar devices shall be constructed and installed in a workmanlike manner;

(3) Bushes, weeds, or any other material or object shall not be allowed to obscure any traffic control devices;

(4) All signs, barricades, and other control devices intended for use during hours of darkness shall be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare; and

(5) Flagpersons shall be provided where necessary to adequately protect the public and railroad employees. The flagpersons shall be responsible and competent and possess at least average intelligence, vision, and hearing. They shall be neat in appearance and courteous to the public. [1977 ex.s. c 168 § 2.]

81.53.420 Traffic control devices during construction, repair, etc. of crossing or overpass—Rules. The utilities and transportation commission shall adopt rules to implement the provisions of RCW 81.53.400 and 81.53.410 pursuant to chapter 34.04 RCW. The commission shall invite the participation of all interested parties in any hearings or proceedings taken under this section, including any parties who request notice of any proceedings.

Any rules adopted under this section and any devices employed under RCW 81.53.410 shall conform to the national standards established by the current manual, including any future revisions, on the Uniform Traffic

Control Devices as approved by the American National Standards Institute as adopted by the federal highway administrator of the United States department of transportation.

Rules adopted by the commission shall specifically prescribe the duties, procedures, and equipment to be used by the flagpersons required by RCW 81.53.410.

RCW 81.53.400 through 81.53.420 and rules adopted thereunder shall be enforced by the commission under the provisions of chapter 81.04 RCW: *Provided*, That rules adopted by the commission shall recognize that cities with a population in excess of four hundred thousand are responsible for specific public thoroughfares and have the specific responsibility and authority for determining the practices relating to safeguarding the public during construction, repair, and maintenance activities. [1977 ex.s. c 168 § 3.]

81.53.900 Effective date—1975 1st ex.s. c 189. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 189 § 4.]

Chapter 81.54

RAILROADS—INSPECTION OF INDUSTRIAL CROSSINGS

Sections

81.54.010	Definitions.
81.54.020	Annual inspection of industrial crossings.
81.54.030	Reimbursement of inspection cost.
81.54.040	Chapter not operative within first class cities.

81.54.010 Definitions. The term "grade crossing" when used in this chapter means any point or place where a logging or industrial railroad crosses a highway or a highway crosses such railroad or such railroad crosses any other railroad, at a common grade.

The term "over-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing" shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "logging" or "industrial" railroad when used in this chapter shall include every railway owned or operated primarily for the purpose of carrying the property of its owners or operators or a limited class of persons, with all tracks, spurs and sidings used in connection therewith. [1961 c 14 § 81.54.010. Prior: 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

81.54.020 Annual inspection of industrial crossings. All grade crossings, under-crossings and over-crossings on the line of every logging and other industrial railway

as herein defined shall be inspected annually by the commission as to condition, also maintenance, and safety in the interest of the public, for the purpose that the commission may, if it shall deem it necessary, require such improvements, changes and repairs as in its judgment are proper to the end that adequate safety shall be provided for the public. [1961 c 14 § 81.54.020. Prior: 1941 c 161 § 2; Rem. Supp. 1941 § 10511-2. Formerly RCW 81.52.310.]

81.54.030 Reimbursement of inspection cost. Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his line and pay with the filing a fee not to exceed ten dollars for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

Every person failing to make the report and pay the fees required, shall be guilty of a misdemeanor and in addition be subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due. [1961 c 14 § 81.54.030. Prior: 1951 c 111 § 1; 1941 c 161 § 3; Rem. Supp. 1941 § 10511-3. Formerly RCW 81.52.320.]

81.54.040 Chapter not operative within first class cities. This chapter shall not be operative within the limits of cities of the first class. [1961 c 14 § 81.54.040. Prior: 1953 c 95 § 16; 1951 c 111 § 2. Formerly RCW 81.52.325.]

Chapter 81.56

RAILROADS—SHIPPERS AND PASSENGERS

Sections

81.56.010	Distribution of cars.
81.56.020	Distributing book must be kept.
81.56.030	Discrimination prohibited—Connecting lines.
81.56.040	Must grant equal privileges.
81.56.050	Joint rates and through routes.
81.56.060	Forest products—Scales at junctions.
81.56.070	Forest products—Charges, how based.
81.56.080	Forest products—Shipper's count and weight.
81.56.100	Forest products—Penalty.
81.56.110	Forest products—Special contracts regarding weights.
81.56.120	Cruelty to stock in transit—Penalty.
81.56.130	Commission rules to expedite traffic.
81.56.140	Agent must have fixed place of business.
81.56.150	Regulating sale of passenger tickets.
81.56.160	Redemption of unused tickets.

Constitutional limitations, generally: State Constitution Art. 12.

Express companies: State Constitution Art. 12 § 21.

81.56.010 Distribution of cars. Every railroad company shall upon reasonable notice, furnish to all persons and corporations who may apply therefor and offer property for transportation sufficient and suitable cars for the transportation of such property in carload lots. In case at any particular time a railroad company has not sufficient cars to meet all the requirements for transportation of property in carload lots, all cars available for such purpose shall be distributed among the several applicants therefor, without unjust discrimination between shippers, localities or competitive or noncompetitive points. [1961 c 14 § 81.56.010. Prior: 1911 c 117 § 11; RRS § 10347.]

81.56.020 Distributing book must be kept. Every railroad company shall keep, subject to the inspection of any bona fide shipper, a book or books known as "car distributing book," which shall be kept by such officer or officers, employees of such railroad, and in such manner and form as the commission shall direct, showing among other things all orders for cars received by such railroad company, the name of the person ordering the same, the time when and place where such cars are required, the time when and place where such cars were supplied, and such other matters and information as the commission may prescribe. [1961 c 14 § 81.56.020. Prior: 1911 c 117 § 12; RRS § 10348.]

81.56.030 Discrimination prohibited—Connecting lines. Every railroad company shall, under such regulations as may be prescribed by the commission, afford all reasonable, proper and equal facilities for the interchange of passengers, tonnage and cars, loaded or empty, between the lines, owned, operated, controlled or leased by it and the lines of every other railroad company; and shall, under such regulations as the commission may prescribe, receive and transport, without delay or discrimination, the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad: *Provided*, That perishable freight of all kinds and livestock shall have precedence of shipment. Every railroad company as such is required to receive from every other railroad company at a connecting point the tonnage carried by such other railroad company in the cars in which the same may be loaded, and haul the same through to the point of destination if the destination be upon a line owned, operated or controlled by such railroad company, or, if the destination be upon the line of some other railroad company, to haul such tonnage in such cars through to the connecting point upon the line operated, owned, controlled or leased by it by way of route over which such car is billed, and there deliver the same to the next connecting carrier under such regulations as the commission may prescribe. [1961 c 14 § 81.56.030. Prior: 1911 c 117 § 24; RRS § 10360.]

81.56.040 Must grant equal privileges. No railroad corporation or company organized or doing business in this state shall allow any telegraph or telephone company, or any individual, any facilities, privileges or rates for transportation of men or material, or for repairing

their lines, not allowed to all telegraph and telephone companies and individuals. [1961 c 14 § 81.56.040. Prior: 1890 p 292 § 4; RRS § 11341.]

81.56.050 Joint rates and through routes. Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that the rates and charges in force over two or more railroads, between any two points in the state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate exists between such points, and that the public necessities and convenience demand the establishment of a through route and a joint rate between such points, the commission may order such railroads to establish such through route, and may establish and fix a joint rate which will be fair, just, reasonable and sufficient, to be followed, charged, enforced, demanded and collected in the future, and the commission may order that carload freight moving between such points shall be carried by the different companies, parties to such through route and joint rate, without being transferred from the originating cars. In case no agreement exists between such railroads for the interchange of cars, then the commission, before making such order, shall be empowered to, and it shall be its duty, to make rules for the expeditious and safe return and proper compensation for the cars so loaded by the company or companies receiving the same. [1961 c 14 § 81.56.050. Prior: 1911 c 117 § 57; RRS § 10393.]

81.56.060 Forest products—Scales at junctions. All railroad companies operating as common carriers within the limits of this state, shall be required to provide scales, and weigh at junction or at some common point within this state all cars loaded with lumber, shingles or other forest products for shipment. [1961 c 14 § 81.56.060. Prior: 1905 c 126 § 1; RRS § 10474.]

81.56.070 Forest products—Charges, how based. All charges for freight on said commodities, except where error is apparent, shall be based on the weights determined by the weighing stations within the limits of this state, and all bills of lading of railroad companies operating within the limits of this state shall specify these provisions: *Provided*, That RCW 81.56.060 through 81.56.110 shall not apply to switching charges or to the handling of logs where the charge is by the car or by the thousand feet. [1961 c 14 § 81.56.070. Prior: 1905 c 126 § 2; RRS § 10475.]

81.56.080 Forest products—Shipper's count and weight. Any railroad company's employee acting as weigher shall upon request of any shipper give him a statement showing gross and net weight of any shipment by him. Sworn count and weight of shipper shall be presumptive evidence of true weight where error in railroad weights is apparent. [1961 c 14 § 81.56.080. Prior: 1905 c 126 § 3; RRS § 10476.]

81.56.100 Forest products—Penalty. In case of violation of the provisions of RCW 81.56.060 through 81.56.110 by any railroad company, it shall pay a penalty of twenty dollars for every car it shall neglect to weigh and bill within the state as above provided, to be recovered from such company in action where there is any agent of such railroad company who may be served with process, and the penalties recovered under RCW 81.56.060 through 81.56.110 shall be paid into the county treasury in such county where action is taken. [1961 c 14 § 81.56.100. Prior: 1905 c 126 § 5; RRS § 10478.]

81.56.110 Forest products—Special contracts regarding weights. Nothing contained in RCW 81.56.060 through 81.56.110 shall interfere with the right of the shipper and carrier to enter into a private contract regarding weights when it is impracticable to weigh. [1961 c 14 § 81.56.110. Prior: 1905 c 126 § 6; RRS § 10479.]

81.56.120 Cruelty to stock in transit—Penalty. Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one hundred dollars. [1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494.]

Arrests for violations of RCW 81.56.120: RCW 16.52.060.

81.56.130 Commission rules to expedite traffic. The commission shall have, and it is hereby given, power to provide by proper rules and regulations the time within which all railroads shall furnish, after demand therefor, all cars, equipment and facilities for the handling of freight in carload and less than carload lots, and receiving, gathering and transporting, after demand, of all express packages and the delivery thereof at destination, the extent of free gathering and distributing limits for express packages in cities and towns, the distance that freight shall be transported each day after receipt, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees and persons to whom freight may be consigned shall unload and discharge the same and receive freight from

the freight rooms, and to provide the penalties to be paid to consignors and consignees for delays on the part of railroads to conform to such rules, and prescribe the penalty to be paid by consignors and consignees to railroads for failure to observe such rules. [1961 c 14 § 81.56.130. Prior: 1911 c 117 § 59; RRS § 10395.]

81.56.140 Agent must have fixed place of business. Every agent, person, firm, or corporation engaged in selling, issuing or dealing in railroad passenger transportation in this state, must have a fixed place of business in the town or city wherein such agent, person, firm, or corporation transacts said business, and such agent, person, firm or corporation is hereby required to keep the certificate mentioned in RCW 81.56.150, posted in a conspicuous place in such place of business. [1961 c 14 § 81.56.140. Prior: 1905 c 180 § 2; RRS § 10497.]

81.56.150 Regulating sale of passenger tickets. It shall be the duty of every person or corporation engaged wholly or in part in the business of carrying passengers for hire, to provide every agent authorized to sell its passage tickets in this state, with a certificate of his authority, attested by its seal and the signature of its manager, secretary or general passenger agent, which shall contain a designation of the place of business at which such authority shall be exercised.

Every person and every corporation or association, and every officer, agent or employee thereof who shall sell, exchange or transfer, or have in his possession with intent to sell, exchange or transfer, or maintain, conduct or operate any office or place of business for the sale, exchange or transfer of any passage ticket or pass or part thereof, or any other evidence of a right to travel upon any railroad or boat, whether the same be owned or operated within or without the limits of this state, in any place except his place of business, or within such place of business without having rightfully in his possession and posted in a conspicuous place therein the certificate of authority hereinabove provided for, shall be guilty of a misdemeanor. [1961 c 14 § 81.56.150. Prior: 1909 c 249 § 396; RRS § 2648.]

81.56.160 Redemption of unused tickets. Every person or corporation engaged wholly or in part in the business of carrying passengers for hire in this state, and every authorized ticket agent thereof, to whom there shall be presented by the holder thereof, within one year after its expiration, any passage ticket or part thereof, or other evidence of right to travel, wholly or in part upon the railroad or boat of such person or corporation, which shall be wholly or partially unused, who shall fail to redeem the same within three days after presentation, upon the following terms, to wit:

(1) When wholly unused, for the price paid therefor; and

(2) When partially unused, for the price paid therefor, less the regular toll or charge for the passage had;

Shall be punished by a fine of not more than five hundred dollars, and in addition thereto shall forfeit to

the holder of such ticket or part thereof or other evidence of a right to travel, three times the redeemable value thereof. [1961 c 14 § 81.56.160. Prior: 1909 c 249 § 397; RRS § 2649.]

Chapter 81.60

RAILROADS—SPECIAL POLICE AND POLICE REGULATIONS

Sections

81.60.010	Governor may appoint special police.
81.60.020	Application for appointment.
81.60.030	Oath of policemen.
81.60.040	Duties of policemen.
81.60.050	Badge.
81.60.060	Liability for unlawful acts.
81.60.070	Malicious injury to railroad property.
81.60.080	Sabotaging rolling stock.
81.60.090	Receiving stolen railroad property.

Intoxication of railway employee: RCW 9.91.020.

Tampering with lights, signals, etc.: RCW 88.08.020.

81.60.010 Governor may appoint special police. The governor shall have the power to and may in his discretion appoint and commission special police officers at the request of any railroad corporation and may revoke any such appointment at his pleasure. [1961 c 14 § 81.60.010. Prior: 1915 c 118 § 1; RRS § 10542.]

81.60.020 Application for appointment. Any railroad corporation desiring the appointment of any of its officers, agents or servants not exceeding twenty-five in number for any one division of any railroad operating in this state (division as herein intended, shall mean the part of any railroad or railroads under the jurisdiction of any one division superintendent), as special police officers shall file with the governor an application stating the name, age and place of residence of the person whose appointment it desires, the position he occupies with the railroad corporation, the nature of his duties and the reasons why his appointment is desired, which application shall be signed by the president or some managing officer of the railroad corporation and shall be accompanied by an affidavit of such officer to the effect that he is acquainted with the person whose appointment is sought, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely entrusted with the powers of a police officer. [1961 c 14 § 81.60.020. Prior: 1955 c 99 § 1; 1915 c 118 § 2; RRS § 10543.]

81.60.030 Oath of policemen. Before receiving his commission each person appointed under the provisions of RCW 81.60.010 through 81.60.060 shall take, subscribe and file with the governor an oath to support the Constitution of the United States, the Constitution and laws of the state and to faithfully perform the duties of his office. [1961 c 14 § 81.60.030. Prior: 1915 c 118 § 3; RRS § 10544.]

81.60.040 Duties of policemen. Every police officer appointed and commissioned under the provisions of

RCW 81.60.010 through 81.60.060 shall when on duty have the power and authority conferred by law on peace officers, but shall exercise such power only in the protection of the property belonging to or under the control of the corporation at whose instance he is appointed and in preventing, and making arrest for, violations of law upon or in connection with such property. [1961 c 14 § 81.60.040. Prior: 1915 c 118 § 4; RRS § 10545.]

81.60.050 Badge. Every such special police officer shall, when on duty, wear in plain view a metal shield bearing the words "special police" and the name of the corporation by which he is employed. [1961 c 14 § 81.60.050. Prior: 1915 c 118 § 5; RRS § 10546.]

81.60.060 Liability for unlawful acts. The corporation procuring the appointment of any special police shall be solely responsible for the compensation for his services and shall be liable civilly for any unlawful act of such officer resulting in damage to any person or corporation. [1961 c 14 § 81.60.060. Prior: 1915 c 118 § 6; RRS § 10547.]

81.60.070 Malicious injury to railroad property. Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway; and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor or car on any railway, shall be punished by imprisonment in the state penitentiary for not more than twenty-five years. [1961 c 14 § 81.60.070. Prior: 1909 c 249 § 398; RRS § 2650.]

81.60.080 Sabotaging rolling stock. Any person or persons who shall wilfully or maliciously, with intent to injure or deprive the owner thereof, take, steal, remove, change, add to, alter, or in any manner interfere with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company in this state, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [1961 c 14 § 81.60.080. Prior: 1941 c 212 § 1; Rem. Supp. 1941 § 2650-1.]

81.60.090 Receiving stolen railroad property. Every person who shall buy or receive any of the property described in RCW 81.60.080, knowing the same to have been stolen, shall be guilty of a felony, and upon conviction thereof shall be punished as provided in RCW 81.60.080. [1961 c 14 § 81.60.090. Prior: 1941 c 212 § 2; Rem. Supp. 1941 § 2650-2.]

Chapter 81.61

RAILROADS—PASSENGER-CARRYING VEHICLES FOR EMPLOYEES

Sections

81.61.010	"Passenger-carrying vehicle" defined.
81.61.020	Minimum standards for safe maintenance and operation—Rules and orders, scope.
81.61.030	Rules and orders—Adoption and enforceability—Hearings, notice of.
81.61.040	Inspection authorized in enforcing rules and orders.

81.61.010 "Passenger-carrying vehicle" defined. Unless the context clearly requires otherwise, the term "passenger-carrying vehicle" as used in this chapter means those buses and trucks owned, operated and maintained by a railroad company which transports railroad employees in other than the cab of such vehicle and designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks. [1977 ex.s. c 2 § 1.]

81.61.020 Minimum standards for safe maintenance and operation—Rules and orders, scope. The utilities and transportation commission shall adopt such rules and orders as are necessary to insure that every passenger-carrying vehicle provided by a railroad company to transport employees in the course of their employment shall be maintained and operated in a safe manner whether it is used on a public or private road or railroad. Such rules and orders shall establish minimum standards for:

(1) The construction and mechanical equipment of the passenger-carrying vehicles, including coupling devices, lighting devices and reflectors, exhaust system, rear vision mirrors, service and parking brakes, steering mechanisms, tires, warning and signaling devices, windshield wipers and heating equipment capable of maintaining a reasonable temperature in passenger areas;

(2) The operation of passenger-carrying vehicles, including driving rules, the loading and carrying of passengers, maximum daily hours of service by drivers, minimum age and skill of drivers, physical condition of drivers, refueling, road warning devices, and the transportation of gasoline and explosives;

(3) The safety of passengers in a passenger-carrying vehicle, including emergency exits, fire extinguishers, first aid kits, facilities for communication between cab and rear compartments, means of ingress and egress, side walls, canopy, and tail gates or other means of retaining passengers within the passenger-carrying vehicle. [1977 ex.s. c 2 § 2.]

81.61.030 Rules and orders—Adoption and enforceability—Hearings, notice of. Any rules or orders adopted under this chapter shall be subject to the requirements of, and enforceable by the penalties imposed by chapter 81.04 RCW. Any interested person or group may request notice of, and participate in any hearings or proceedings held pursuant to this chapter. The commission shall conduct a hearing prior to the adoption of any rule or order under this chapter. [1977 ex.s. c 2 § 3.]

81.61.040 Inspection authorized in enforcing rules and orders. The commission may, in enforcing rules and orders under this chapter, inspect any passenger-carrying vehicle provided by a railroad company to transport employees in the course of their employment. Upon request, the chief of the state patrol may assist the commission in these inspections. [1977 ex.s. c 2 § 4.]

Chapter 81.62

RAIL DEVELOPMENT COMMISSION

Sections

81.62.010	Legislative finding, intent.
81.62.020	Membership.
81.62.030	Procedures, expenses, powers, dissolution date.
81.62.040	Staff, budget approval.
81.62.050	Study subjects.
81.62.060	Reports.
81.62.900	Severability—1987 c 429.
81.62.901	Effective date—1987 c 429.

81.62.010 Legislative finding, intent. The legislature finds that in many areas of the state, alternatives to highway transportation are necessary to adequately move the state's citizens and its commerce. In rural areas, continued railroad abandonments have reduced the options for transportation of agricultural products and threaten the economic health of many areas of the state. While rail lines lie idle, increased volumes of truck traffic require significant improvement of rural public roads.

The legislature finds that in urban areas, ever-increasing volumes of traffic congest the highway system vital to the movement of people, goods, and services in metropolitan areas. Without relief, these arteries will no longer provide the mobility for which they were intended.

The legislature seeks to provide for a comprehensive examination of the rail freight issue and rail passenger service, particularly urban rail systems.

It is the intent of the legislature to establish a temporary commission, made up of persons interested in and affected by these rail issues. This commission shall make recommendations to the legislature regarding future Washington policy for rail freight and rail passenger service. It is further the intent that this commission should also address future use of rail corridors and rights of way in this state, as they relate to such services. In developing recommendations, the legislature desires that the commission use the numerous studies and plans on these subjects that have been completed. [1987 c 429 § 1.]

81.62.020 Membership. (1) The rail development commission is created to carry out the functions of this chapter. The commission shall consist of nineteen voting members.

(2) The governor shall appoint sixteen members, two from each Congressional district, to represent the following:

(a) Four as city representatives, who shall be elected city officials, with at least one from a small city or town affected by abandonment of rail freight service and one

from a large city who was a member of the Puget Sound council of governments multicorridor steering committee;

(b) Four as county representatives, who shall be elected county officials, with at least one from a small county affected by abandonment of rail freight service and one from a large county who was a member of the Puget Sound council of governments multicorridor steering committee;

(c) Two citizens from Eastern Washington to represent the private sector;

(d) Two citizens from Western Washington to represent the private sector;

(e) One as representative of a railroad;

(f) One as representative of a labor organization that represents workers in the railroad industry;

(g) One as representative of the Washington public ports association; and

(h) One as representative of the Washington state transit association.

(3) The three remaining members shall be:

(a) The secretary of transportation or a designee;

(b) One additional representative of the department of transportation appointed by the secretary of transportation; and

(c) The director of the Washington state transportation center created by agreement between the University of Washington, Washington State University, and the department of transportation.

(4) The chair of the legislative transportation committee shall appoint four members of the legislature to serve as nonvoting members of the commission. [1987 c 429 § 2.]

81.62.030 Procedures, expenses, powers, dissolution date. The commission shall choose a chair from among its membership and shall adopt rules related to its powers and duties under this chapter. Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 44.04.120, as appropriate. Members appointed by the governor shall be compensated in accordance with RCW 43.03-.220. Expenses of the commission shall be paid from the rail development account. The commission has all powers necessary to carry out its duties as prescribed by this chapter. The commission shall be dissolved on June 30, 1989. [1987 c 429 § 3.]

81.62.040 Staff, budget approval. The commission may employ staff as necessary to carry out this chapter. The legislative transportation committee, the Washington state transportation center, and the department of transportation may provide additional staff support for the commission. The legislative transportation committee must approve the commission's budget plan before the commission may expend funds. [1987 c 429 § 4.]

81.62.050 Study subjects. The commission shall study the following subjects:

(1) Rail freight systems, including:

(a) Funding levels necessary to address the state rail assistance account and loan programs for local rail efforts and to preserve essential rail freight corridors;

(b) Any institutional changes necessary to enhance state and local rail freight efforts; and

(2) Rail passenger systems, including:

(a) Light rail planning efforts and evaluation of institutional alternatives for constructing and operating any viable systems, and recommend preferred options;

(b) Recommended actions for interim steps and an appropriate timetable to develop such a future system including right of way preservation, environmental impact studies, preliminary engineering, and similar items;

(c) Long-term funding necessary for such systems and recommendations regarding sources to include a subsidy or fare-box ratios, or both;

(d) The role of Amtrak-type service or commuter service in rail passenger movements and the state and local relationship to such service;

(e) The future of high-speed rail transit, including the desirability of intercity corridor preservation. [1987 c 429 § 5.]

81.62.060 Reports. The commission shall report to the legislative transportation committee on the rail freight program by December 1, 1987. Recommendations on the remainder of study shall be submitted by December 1, 1988, with an interim report in December 1987, recommending items that need to be addressed more quickly. [1987 c 429 § 6.]

81.62.900 Severability—1987 c 429. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 429 § 7.]

81.62.901 Effective date—1987 c 429. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 25, 1987. [1987 c 429 § 8.]

Chapter 81.64 STREET RAILWAYS

Sections

81.64.010	Grant of franchise.
81.64.020	Application to county legislative authority—Notice—Hearing—Order.
81.64.030	May cross public road.
81.64.040	Eminent domain.
81.64.050	Right of entry.
81.64.060	Purchase or lease of street railway property.
81.64.070	Consolidation of companies.
81.64.080	Fares and transfers.
81.64.090	Competent employees required.
81.64.100	Competency defined.
81.64.110	Penalty.
81.64.120	Car equipment specified.
81.64.130	Penalty.
81.64.140	Weather guards.
81.64.150	Penalty.
81.64.160	Hours of labor.

81.64.170 Penalty.

Bridges across navigable waters: RCW 79.91.090 through 79.91.120.
Municipal transportation systems: Title 35 RCW.

81.64.010 Grant of franchise. The legislative authority of the city or town having control of any public street or road, or where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroads or railways, motor railroads or railways and railroads and railways of which the motive power is any power other than steam, together with such poles, wires and other appurtenances upon, over, along and across any such public street or road and in granting such authority the legislative authority of such city or town or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such railroads or railways and their appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be maintained and operated. [1961 c 14 § 81.64.010. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.020 Application to county legislative authority—Notice—Hearing—Order. On application being made to the county legislative authority for such authority, the county legislative authority shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least thirty days before the day fixed for the hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If, after the hearing, the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or such part thereof as it deems to be for the public interest, and shall require such railroad or railway and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. [1985 c 469 § 63; 1961 c 14 § 81.64.020. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.030 May cross public road. In case any such railroad or railway, is or shall be located in part on private right of way, the owner thereof shall have the right

to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: *Provided*, That any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or public street shall be liable to the county for all necessary expense incurred in restoring such county road or public street to a suitable condition for travel. [1961 c 14 § 81.64.030. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.040 Eminent domain. Every corporation incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property for right of way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: *Provided*, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the electric railroad or railway thereon has been authorized in accordance with RCW 81.64.010 through 81.64.030. [1961 c 14 § 81.64.040. Prior: 1903 c 175 § 2; RRS § 11083.]

81.64.050 Right of entry. Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 81.64.050. Prior: 1899 c 94 § 2; RRS § 11085.]

81.64.060 Purchase or lease of street railway property. Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of constructing, owning or operating railroads or railways by electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the electric railroad or electric railway, of any other corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: *Provided*, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 175, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 81.64.060. Prior: 1903 c 175 § 3; RRS § 11084.]

81.64.070 Consolidation of companies. With the consent of the majority in interest of their shareholders, two or more corporations operating street railway lines within or in the suburbs of the same municipality, may amalgamate their businesses and properties by consolidation, sale, lease, or other appropriate means, and either by conveyance to a third corporation or one to the other. [1961 c 14 § 81.64.070. Prior: 1917 c 170 § 1; RRS § 11086.]

81.64.080 Fares and transfers. No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town: *Provided*, That such rate may be exceeded or lowered as to any municipally owned street railroad when the corporate authorities of the municipality owning such railroad shall, by an ordinance duly passed, authorize the collection of a higher or lower rate of fare, to be specified in such ordinance, and as to any other street railroad company, such rate may be exceeded or lowered with the permission or upon the order of the commission after the filing of a tariff or a complaint by such street railroad company and a hearing thereon as provided in this title. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its passengers transfers entitling such passenger to one continuous trip over and upon portions of its lines within the said city or town not reached by the originating car. [1961 c 14 § 81.64.080. Prior: 1919 c 33 § 1; 1911 c 117 § 25; RRS § 10361.]

81.64.090 Competent employees required. Street railway or street car companies, or street car corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or streetcar line in this state. [1961 c 14 § 81.64.090. Prior: 1901 c 103 § 1; RRS § 11073.]

81.64.100 Competency defined. A man shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman or gripman on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional man or additional men may be required: *Provided*, That during a strike on the streetcar lines the railway companies may employ competent men who have not worked three days on said particular streetcar line. [1961 c 14 § 81.64.100. Prior: 1901 c 103 § 2; RRS § 11074.]

81.64.110 Penalty. Any violation of RCW 81.64.090 by the president, secretary, manager, superintendent, assistant superintendent, stockholder or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line shall, upon

conviction thereof, be deemed guilty of a misdemeanor, and subject the offender to such offense to a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [1961 c 14 § 81.64.110. Prior: 1901 c 103 § 3; RRS § 11075.]

81.64.120 Car equipment specified. Every streetcar run or used on any streetcar line in the state of Washington shall be provided with good and substantial aprons, pilots or fenders, and which shall be so constructed as to prevent any person from being thrown down and run over or caught beneath or under such car. [1961 c 14 § 81.64.120. Prior: 1897 c 94 § 1; RRS § 11076. FORMER PART OF SECTION: 1911 c 117 § 66, part now codified in RCW 81.44.040.]

81.64.130 Penalty. The owners or managers operating any streetcar line failing to comply with the provisions of RCW 81.64.120 shall forfeit and pay to the state of Washington a penalty of not less than twenty-five dollars for each and every violation of RCW 81.64.120 and each car run shall be considered a separate violation of RCW 81.64.120 and every period of five days shall be deemed a separate violation of RCW 81.64.120. [1961 c 14 § 81.64.130. Prior: 1897 c 94 § 2; RRS § 11077.]

81.64.140 Weather guards. All corporations, companies or individuals owning, managing or operating any street railway or line in the state of Washington, shall provide, during the rain or winter season, all cars run or used on its or their respective roads with good, substantial and sufficient vestibules, or weather guards, for the protection of the employees of such corporation, company or individual.

The vestibules or weather guards shall be so constructed as to protect the employees of such company, corporation or individual from the wind, rain or snow. [1961 c 14 § 81.64.140. Prior: (i) 1895 c 144 § 1; RRS § 11078. (ii) 1895 c 144 § 2; RRS § 11079.]

81.64.150 Penalty. Any such street railway company, corporation or individual, as mentioned in RCW 81.64.140, failing to comply with the provisions of RCW 81.64.140, shall forfeit and pay to the state of Washington a penalty of not less than fifty dollars nor more than two hundred and fifty dollars for each and every violation of RCW 81.64.140, and each period of ten days that any such company, corporation or individual shall fail to comply with the provisions of RCW 81.64.140, or for each car used by such corporation, company, or individual not in conformity with RCW 81.64.140, shall be taken and deemed to be a separate violation of RCW 81.64.140. [1961 c 14 § 81.64.150. Prior: 1895 c 144 § 3; RRS § 11080.]

81.64.160 Hours of labor. No person, agent, officer, manager or superintendent or receiver of any corporation or owner of streetcars shall require his or its gripmen, motormen, drivers or conductors to work more than ten hours in any twenty-four hours. [1961 c 14 § 81.64.160. Prior: 1895 c 100 § 1; RRS § 7648.]

81.64.170 Penalty. Any person, agent, officer, manager, superintendent or receiver of any corporation, or owner of streetcar or cars, violating any of the provisions of RCW 81.64.160 shall upon conviction thereof be deemed guilty of a misdemeanor, and be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such gripman, motorman, driver or conductor in the employ of such person, agent, officer, manager, superintendent or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in RCW 81.64.160, and it is hereby made the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of RCW 81.64.160 and 81.64.170. [1961 c 14 § 81.64.170. Prior: 1895 c 100 § 2; RRS § 7649.]

Chapter 81.66

TRANSPORTATION FOR THE ELDERLY AND THE HANDICAPPED

Sections

81.66.010	Definitions.
81.66.020	Private, nonprofit transportation provider required to operate in accordance with this chapter.
81.66.030	Authority of commission.
81.66.040	Certificate required—Application, transferability, carried in vehicle.
81.66.050	Insurance or bond required.
81.66.060	Suspension, revocation, or alteration of certificate.
81.66.070	Standard of care.

81.66.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to elderly or handicapped persons and their attendants.

(4) "Elderly" means any person sixty years of age or older.

(5) "Handicapped" means all persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable without special facilities or special planning or design to use mass transportation facilities and services as efficiently as persons who are not so affected. Handicapped people include (a) ambulatory persons whose capacities are hindered by sensory disabilities such as blindness or deafness, mental disabilities such as mental retardation or emotional illness, physical disability which

still permits the person to walk comfortably, or a combination of these disabilities; (b) semiambulatory persons who require special aids to travel such as canes, crutches, walkers, respirators, or human assistance; and (c) nonambulatory persons who must use wheelchairs or wheelchair-like equipment to travel. [1979 c 111 § 4.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.020 Private, nonprofit transportation provider required to operate in accordance with this chapter. No person or corporation, their lessees, trustees, receivers, or trustees appointed by any court, may operate as a private, nonprofit transportation provider except in accordance with this chapter. [1979 c 111 § 5.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.030 Authority of commission. The commission shall regulate every private, nonprofit transportation provider in this state but has authority only as follows: To issue certificates to such providers; to set forth insurance requirements; to adopt reasonable rules to insure that any vehicles used by such providers will be adequate for the proposed service; to inspect the vehicles and otherwise regulate the safety of operations of each provider; and to regulate in accordance with the procedures set forth in chapter 81.04 RCW any rates, fares, or charges proposed by such providers. The commission may charge fees to private, nonprofit transportation providers, which shall be approximately the same as the reasonable cost of regulating such providers. [1979 c 111 § 6.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.040 Certificate required—Application, transferability, carried in vehicle. No private, nonprofit transportation provider may operate in this state without first having obtained from the commission under the provisions of this chapter a certificate, but a certificate shall be granted to any private, nonprofit transportation provider holding an auto transportation company certificate on September 1, 1979, upon surrender of the auto transportation company certificate. Any right, privilege, or certificate held, owned, or obtained by a private, nonprofit transportation provider may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. The commission shall issue a certificate to any person or corporation who files an application, in a form to be determined by the commission, which sets forth:

(1) Satisfactory proof of its status as a private, nonprofit corporation;

(2) The kind of service to be provided;

(3) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service and that drivers of such vehicles will be adequately trained and qualified;

(4) Any proposed rates, fares, or charges;

(5) Satisfactory proof of insurance or surety bond, in accordance with RCW 81.66.050.

The commission may deny a certificate to a provider

who does not meet the requirements of this section. Each vehicle of a private, nonprofit transportation provider shall carry a copy of the provider's certificate. [1979 c 111 § 7.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.050 Insurance or bond required. The commission shall, in the granting of certificates to operate any private, nonprofit transportation provider, require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each vehicle used or to be used in transporting persons for compensation. The commission shall fix the amount of the insurance policy or policies or surety bond, giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. Such liability and property damage insurance or surety bond shall be maintained in force on each vehicle while so used. Each policy for liability of property damage insurance or surety bond required herein, shall be filed with the commission and kept in full force and effect, and failure to do so shall be cause for the revocation of the certificate. [1979 c 111 § 8.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.060 Suspension, revocation, or alteration of certificate. The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate issued under this chapter, and an opportunity to such holder to be heard, at which it is proven that the holder has wilfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070. [1979 c 111 § 9.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.070 Standard of care. The provisions of this chapter shall not affect the standard of care, as set forth in RCW 46.74.030, to which a private, nonprofit transportation provider shall be held. [1979 c 111 § 10.]

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 81.68

AUTO TRANSPORTATION COMPANIES

Sections

81.68.010	Definitions.
81.68.015	Application of chapter restricted.
81.68.020	Compliance with chapter required.
81.68.030	Regulation by commission.
81.68.040	Certificate of convenience and necessity.
81.68.045	Excursion service companies—Certificate.
81.68.050	Filing fees.

- 81.68.060 Liability and property damage insurance—Surety bond.
- 81.68.065 Self-insurers—Exemptions as to insurance or bond.
- 81.68.070 Public service law invoked.
- 81.68.080 Penalty.
- 81.68.090 Scope of chapter.

Auto stages, licensing, etc.: Title 46 RCW.

Highway user tax structure: Chapter 46.85 RCW.

Mileage fees: RCW 46.16.125.

Penalty for carrying passengers without license: RCW 46.16.180.

Seating capacity fees: RCW 46.16.121.

81.68.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and baggage, mail, and express on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

(4) "Excursion service company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area designated by the commission, to any other location within the state of Washington and returning to that origin. The service shall not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered or afforded shall be computed, charged, or assessed by the excursion service company on an individual fare basis.

(5) "Public highway" means every street, road, or highway in this state.

(6) The words "between fixed termini or over a regular route" mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor propelled vehicle, even though there may be departure from the termini or route, whether the departures are periodic or irregular. Whether or not any motor propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this section is a question of fact, and the finding of the commission thereon is final and is not subject to review. [1984 c 166 § 1; 1979 c 111 § 16; 1975-'76 2nd ex.s. c 121 § 1; 1969 ex.s. c 210 § 10; 1961 c 14 § 81.68.010. Prior: 1935 c 120 § 1; 1921 c 111 § 1; RRS § 6387.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.68.015 Application of chapter restricted. This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, motor propelled vehicles operated exclusively in transporting agricultural, horticultural, dairy, or other farm products from the point of production to the market, or any other carrier that does not come within the term "auto transportation company" or "excursion service company" as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with nor infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation company or excursion service company certificated under this chapter. [1984 c 166 § 2.]

81.68.020 Compliance with chapter required. No corporation or person, their lessees, trustees, or receivers or trustees appointed by any court whatsoever, may engage in the business of operating as a common carrier any motor propelled vehicle for the transportation of persons, and baggage, mail, and express on the vehicles of auto transportation companies carrying passengers, between fixed termini or over a regular route, or the vehicles of an excursion service company between the designated areas of pickup and points of destination, for compensation on any public highway in this state, except in accordance with the provisions of this chapter. [1984 c 166 § 3; 1961 c 14 § 81.68.020. Prior: 1927 c 166 § 1; 1921 c 111 § 2; RRS § 6388.]

81.68.030 Regulation by commission. The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company and every excursion service company in this state as provided in this section. Under this authority, it shall for each auto transportation company and for each excursion service company:

(1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;

(2) Regulate the accounts, service, and safety of operations;

(3) Require the filing of annual and other reports and of other data;

(4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;

(5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate under this chapter, and an opportunity to the holder to be heard, at which it shall be proven that the holder wilfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070. [1984 c 166 § 4; 1961 c 14 § 81.68.030. Prior: 1921 c 111 § 3; RRS § 6389.]

81.68.040 Certificate of convenience and necessity. No auto transportation company shall operate for the transportation of persons, and baggage, mail and express on the vehicles of auto transportation companies carrying passengers, for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity require such operation; but a certificate shall be granted when it appears to the satisfaction of the commission that such person, firm or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921. Any right, privilege, certificate held, owned or obtained by an auto transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [1961 c 14 § 81.68.040. Prior: 1921 c 111 § 4; RRS § 6390.]

81.68.045 Excursion service companies—Certificate. No excursion service company may operate for the transportation of persons for compensation without first having obtained from the commission under the provisions of this chapter a certificate to do so.

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the

applicant is fit, willing, and able to properly perform the services proposed and conform to the provisions of this chapter and the rules of the commission adopted under this chapter, and that such operations will be consistent with the public interest. However, a certificate shall be granted when it appears to the satisfaction of the commission that the person, firm, or corporation was actually operating in good faith that type of service for which the certificate was sought on January 15, 1983. Any right, privilege, or certificate held, owned, or obtained by an excursion service company may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. For good cause shown the commission may refuse to issue the certificate, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public interest may require. [1984 c 166 § 5.]

81.68.050 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fees as the commission may prescribe by rule: *Provided*, That such fee shall not exceed two hundred dollars. [1973 c 115 § 5; 1961 c 14 § 81.68.050. Prior: 1955 c 125 § 9; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

81.68.060 Liability and property damage insurance—Surety bond. In granting certificates to operate any auto transportation company or excursion service company, for transporting for compensation persons and baggage, mail, and express on the vehicles of auto transportation companies or excursion service companies carrying passengers, the commission shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor propelled vehicle used or to be used in transporting persons for compensation, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person and not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less and not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all persons receiving personal injury by reason of at least one act of negligence and not less than fifty thousand dollars for damage to property of any person other than the assured. The commission shall fix the amount of the insurance policy or policies or security deposit giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The liability and property damage insurance or surety bond shall be maintained in force on [the] motor

propelled vehicle while so used, and each policy for liability or property damage insurance or surety bond required by this section shall be filed with the commission and kept in full force and effect. Failure so to do is cause for the revocation of the certificate. [1984 c 166 § 6; 1977 ex.s. c 298 § 1; 1961 c 14 § 81.68.060. Prior: 1921 c 111 § 5; RRS § 6391.]

81.68.065 Self-insurers—Exemptions as to insurance or bond. Any auto transportation company now or hereafter authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the interstate commerce commission of the United States in accordance with the provisions of the United States interstate commerce act applicable to self insurance by motor carriers, shall be exempt, so long as such qualification remains effective, from all provisions of law relating to the carrying or filing of insurance policies or bonds in connection with such operations.

The commission may require proof of the existence and continuation of such qualification with the interstate commerce commission to be made by affidavit of the auto transportation company, in such form as the commission shall prescribe. [1961 c 14 § 81.68.065. Prior: (i) 1949 c 127 § 1; Rem. Supp. 1949 § 6386-5a. (ii) 1949 c 127 § 2; Rem. Supp. 1949 § 6386-5b.]

81.68.070 Public service law invoked. In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review, to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state, considered and disposed of by said courts in the manner, under the conditions and subject to the limitations and with the effect specified in this title. [1971 c 81 § 146; 1961 c 14 § 81.68.070. Prior: 1921 c 111 § 6; RRS § 6392.]

81.68.080 Penalty. Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor and punishable as such: *Provided*, That violation of an order, decision, rule or regulation, direction, demand, or requirement relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, decision, rule or regulation, direction, demand, or requirement equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [1979 ex.s. c 136 § 106; 1961 c 14 § 81.68.080. Prior: 1921 c 111 § 7; RRS § 6393.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

81.68.090 Scope of chapter. Neither this chapter nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress. [1961 c 14 § 81.68.090. Prior: 1921 c 111 § 8; RRS § 6394.]

Chapter 81.70

PASSENGER CHARTER CARRIERS

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81.70.210	Application of chapter to foreign and interstate commerce.
81.70.900	Short title.
81.70.910	Effective date—1965 c 150.

81.70.010 Business affected with the public interest—Declaration of purpose. The use of the public highways for the transportation of passengers for compensation is a business affected with the public interest. It is the purpose of this chapter to preserve for the public full benefit in use of public highways consistent with the needs of commerce, without unnecessary congestion or wear and tear upon such highways; to secure to the people safe, adequate and dependable transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers

over such highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to safety of operations and accident indemnity so that safe, adequate and dependable service by all necessary transportation agencies shall be maintained, and the full use of the highway reserved to the public. [1965 c 150 § 2.]

81.70.020 Definitions. Unless the context otherwise requires, the definitions and general provisions set forth in this section shall govern the construction of this chapter:

(1) "Commission" means the Washington utilities and transportation commission;

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees or receivers;

(3) "Public highway" includes every public street, road or highway in this state;

(4) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;

(5) Subject to the exclusions of RCW 81.70.030, "charter party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation whether in common or contract carriage over any public highway in this state. [1969 c 132 § 1; 1965 c 150 § 3.]

81.70.030 Exclusions. Provisions of this chapter do not apply to:

(1) Persons operating motor vehicles wholly within the limits of incorporated cities;

(2) Persons or their lessees, receivers or trustees insofar as they own, control, operate or manage taxicabs, hotel buses or school buses, when operated as such;

(3) Passenger vehicles carrying passengers on a non-commercial enterprise basis;

(4) Operators of charter boats operating on waters within or bordering this state. [1965 c 150 § 4.]

81.70.040 Certificate required. No charter party carrier of passengers shall engage in transportation services made subject to this chapter without first having obtained from the commission a certificate that public convenience and necessity require such operation. [1969 c 132 § 2; 1965 c 150 § 5.]

81.70.050 Applications for certificates. Applications for certificates shall be in writing, verified under oath, and shall be in such form and contain such information as the commission may require. [1969 c 132 § 3; 1965 c 150 § 6.]

81.70.060 Applications for certificates—Annual renewal fee—Initial filing fee. Each annual application for a certificate to act as a charter party carrier of passengers pursuant to the provisions of this chapter shall be accompanied by an annual renewal fee of twenty-five

dollars. Each initial application for a permanent or temporary certificate, or transfer or encumbrance of a certificate shall be accompanied by such filing fee as the commission may prescribe by rule: *Provided*, That such fee shall not exceed two hundred dollars. [1973 c 115 § 6; 1969 c 132 § 4; 1965 c 150 § 7.]

81.70.070 Proof of reasonable fitness and financial responsibility. Before an annual certificate is issued, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct such proposed transportation service. [1969 c 132 § 5; 1965 c 150 § 8.]

81.70.080 Certificates—Grant or denial—Terms and conditions—Publication of tariffs and rates—Certificate of public convenience and necessity under chapter 81.68 RCW, effect. The commission may, with or without hearing, issue a certificate, or may refuse to issue a certificate after a hearing. If the commission finds that public convenience and necessity require the proposed transportation service and the applicant possesses satisfactory fitness and financial responsibility to initiate and conduct the proposed transportation services, and will faithfully comply with the rules and regulations adopted by the commission with respect thereto, it shall issue the certificate to conduct the requested operations or may issue it for the partial exercise of the privilege sought, and may attach to the certificate such terms and conditions as in its judgment are required in the public interest, provided also that the commission shall require a certificated carrier to file and publish its tariffs and rates. The fact that the applicant for the certificate is or may later become a holder of a certificate of public convenience and necessity under chapter 81.68 RCW shall not be deemed inconsistent with the provisions of this chapter, and such dual authority may be authorized. Notwithstanding the provisions of this section, if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate. [1969 c 132 § 6; 1965 c 150 § 9.]

81.70.090 Duration of certificate. A certificate shall be renewable annually unless suspended or terminated by the commission. [1969 c 132 § 7; 1965 c 150 § 10.]

81.70.095 Temporary certificates—Duration—Terms and conditions. The commission may with or without a hearing issue temporary certificates to engage in the business of operating a passenger charter carrier company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the territory covered thereby is not contained in the certificate of any other passenger charter carrier company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations

and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. [1973 c 115 § 7; 1969 c 132 § 8.]

81.70.100 Certificate not to be transferred or encumbered unless authorized. No certificate issued pursuant to this chapter or rights to conduct any of the services therein authorized shall be leased, assigned or otherwise transferred or encumbered, unless authorized by the commission. [1973 c 115 § 8; 1969 c 132 § 9; 1965 c 150 § 11.]

81.70.110 Cancellation, revocation, suspension of certificates—Grounds. The commission may cancel, revoke or suspend any operating certificate issued pursuant to the provisions of this chapter upon any of the following grounds:

- (1) The violation of any of the provisions of this chapter or of any operating certificate issued thereunder;
- (2) The violation of any order, decision, rule, regulation, direction, demand or requirement established by the commission pursuant to this chapter;
- (3) The rendition of a judgment against the charter party carrier of passengers for any penalty imposed under this chapter;
- (4) Failure of a charter party carrier of passengers to pay any fee imposed on the carrier within the time required by law;
- (5) On the request of the holder of the certificate.
- (6) Failure of a certificate holder to operate and perform reasonable service. [1969 c 132 § 10; 1965 c 150 § 12.]

81.70.120 Unlawful to operate after cancellation, etc.—New certificate. After the cancellation or revocation of a certificate or during the period of its suspension, it shall be unlawful for a charter party carrier of passengers to conduct any operations as such a carrier. The commission may either grant or deny an application for a new certificate whenever it appears that a prior certificate of the applicant has been canceled or revoked pursuant to RCW 81.70.110 or whenever it appears after hearing that as a prior certificate holder the applicant engaged in any unlawful activity set forth in RCW 81.70.110 for which his certificate might have been canceled or revoked. [1969 c 132 § 11; 1965 c 150 § 13.]

81.70.130 Regulatory power. To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter party carrier of passengers in the state and may do all things specifically designated in this chapter which are necessary and convenient in the exercise of such power and jurisdiction. [1969 c 132 § 12; 1965 c 150 § 14.]

81.70.140 Applicability of orders, rules, and regulations pertaining to auto transportation companies. To the extent that such are not inconsistent with the provisions of this chapter, all general orders, and rules and regulations applicable to the operation of auto transportation

companies under authority of certificates of public convenience and necessity issued pursuant to the provisions of RCW 81.68.010 through 81.68.090, unless otherwise ordered by the commission, shall apply to charter party carriers of passengers. [1965 c 150 § 15.]

81.70.150 Assurance of protection against liability. The commission shall in granting certificates pursuant to this chapter require charter party carriers of passengers to procure and continue in effect during the life of the certificate adequate protection against liability imposed by law upon the charter party carrier of passengers for the payment of damages for personal bodily injuries including death resulting therefrom, protection against a total liability of the charter party carrier of passengers on account of bodily injuries to or death of one or more persons as a result of any one accident and protection against damage or destruction of property. The minimum requirements for such assurance of protection against liability shall not be less than the requirements which are applicable to operations conducted under certificates of public convenience and necessity issued pursuant to auto transportation companies and the rules and regulations prescribed pursuant thereto shall apply to charter party carriers of passengers. [1969 c 132 § 13; 1965 c 150 § 16.]

Auto transportation companies liability and property damage insurance—Surety bond: RCW 81.68.060.
self-insurers—Exemptions as to insurance or bond: RCW 81.68.065.

81.70.160 Charges for transportation offered or afforded by carrier. Charges for the transportation to be offered or afforded by a charter party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis or on a combination thereof, which charges may vary in accordance with the passenger capacity of the vehicle or the number of persons to be transported, but it shall not be lawful for a charter party carrier of passengers to directly or through his agent, broker or otherwise to contract, agree or arrange to charge, to demand or receive compensation for the transportation offered or afforded which shall be computed, charged or assessed by the carrier on an individual fare basis. [1965 c 150 § 17.]

81.70.170 Unlawful acts or omissions—Penalty. Every person who knowingly or wilfully violates or fails to comply with or who knowingly or wilfully procures, aids, or abets in the violation of any provisions of this chapter or who knowingly or wilfully fails to obey or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission or any part or provisions thereof is guilty of a gross misdemeanor: *Provided*, That violation of an order, decision, rule, regulation, direction, demand, or requirement relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, decision, rule, regulation, direction, demand, or requirement equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is

a misdemeanor. [1979 ex.s. c 136 § 107; 1965 c 150 § 18.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

81.70.180 Gross operating revenue—Quarterly statement and fee—Exemption when fee paid under RCW 81.24.020. Every charter party carrier of passengers shall, between the first and fifteenth days of January, April, July and October of each year, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding three months, or portion thereof, and pay to the commission a fee of four-fifths of one percent of the amount of gross operating revenue: *Provided*, That the fee paid shall in no case be less than two dollars and fifty cents: *Provided further*, That an "auto transportation company," which is also a charter party carrier of passengers, shall not be required to pay a fee to the commission on gross operating revenue upon which a fee has been paid in accordance with RCW 81.24.020. The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which such fees are due. [1977 ex.s. c 48 § 2; 1969 c 132 § 14; 1965 c 150 § 19.]

81.70.190 Disposition of revenue. All fees collected under RCW 81.70.180 or under any other provisions of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [1965 c 150 § 20.]

81.70.200 Acts and omissions of officer, etc., imputed to certificate holder. In construing and enforcing the provisions of this chapter relating to the prescribed privileges and obligations of a holder of a certificate issued hereunder, the act, omission or failure of any officer, agent or employee or persons offering to afford the permitted service with the approval or consent of the certificate holder is the act, omission or failure of the certificate holder. [1969 c 132 § 15; 1965 c 150 § 21.]

81.70.210 Application of chapter to foreign and interstate commerce. Neither this chapter nor any provisions shall apply or be construed to apply to commerce with foreign nations or commerce among the several states except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress. [1965 c 150 § 22.]

81.70.900 Short title. This chapter may be cited as the "Passenger Charter Carriers Act." [1965 c 150 § 23.]

81.70.910 Effective date—1965 c 150. The effective date of this act shall be July 1, 1965. [1965 c 150 § 24.]

(1987 Ed.)

**Chapter 81.72
TAXICAB COMPANIES**

Sections

- 81.72.200 Legislative intent.
- 81.72.210 Local regulatory powers listed.
- 81.72.220 Cooperative agreements, joint regulation.

Transportation of passengers in for hire vehicles: Chapter 46.72 RCW.

81.72.200 Legislative intent. The legislature finds and declares that privately operated taxicab transportation service is a vital part of the transportation system within the state and provides demand-responsive services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and economic viability and stability of privately operated taxicab transportation service are matters of state-wide importance. The regulation of privately operated taxicab transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit political subdivisions of the state to regulate taxicab transportation services without liability under federal antitrust laws. [1984 c 126 § 1.]

81.72.210 Local regulatory powers listed. To protect the public health, safety, and welfare, cities, towns, counties, and port districts of the state may license, control, and regulate privately operated taxicab transportation services operating within their respective jurisdictions. The power to regulate includes:

- (1) Regulating entry into the business of providing taxicab transportation services;
- (2) Requiring a license to be purchased as a condition of operating a taxicab and the right to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;
- (3) Controlling the rates charged for providing taxicab transportation service and the manner in which rates are calculated and collected, including the establishment of zones as the basis for rates;
- (4) Regulating the routes of taxicabs, including restricting access to airports;
- (5) Establishing safety, equipment, and insurance requirements; and
- (6) Any other requirements adopted to ensure safe and reliable taxicab service. [1984 c 126 § 2.]

81.72.220 Cooperative agreements, joint regulation. A city, town, county, or port district may enter into cooperative agreements with any other city, town, county, or port district for the joint regulation of taxicabs. Cooperative agreements may provide for, but are not limited to, the granting, revocation, and suspension of joint taxicab licenses. [1984 c 126 § 3.]

**Chapter 81.75
TRANSPORTATION CENTERS**

Sections

- 81.75.010 Authorization to own and operate—Purpose.

- 81.75.020 Method of acquisition and operation prescribed—
Grants—Consolidation of activities.
81.75.030 Services available—Terms of usage.
81.75.900 Severability—1977 ex.s. c 217.

81.75.010 Authorization to own and operate—

Purpose. It is desirable to a transportation system that convenient and comfortable terminals be established and maintained with the services of all modes of public transportation available to the public at such a center to the extent feasible. It is proper that cities, towns, counties, public transportation benefit area authorities, and municipal corporations of this state be authorized to own and operate transportation centers. [1977 ex.s. c 217 § 1.]

81.75.020 Method of acquisition and operation prescribed—Grants—Consolidation of activities.

Through its council or other legislative body, any city, town, county, public transportation benefit area authority, or other municipal corporation, authorized to operate public transportation services, may construct or otherwise acquire intermodal transportation centers by donation, lease, or purchase and may operate or let for purposes of leasing space at fair market value for the services set forth in RCW 81.75.030, and to perform other functions permitted by law, the centers or portions of the centers, for public or private purposes or for compensation or rental upon such conditions as its council or other legislative body shall from time to time prescribe. The city, town, county, public transportation benefit area authority, or municipal corporation, may apply for and receive grants from the federal government for purposes of funding a transportation center and may consolidate a transportation center with other lawful city or town activities. [1977 ex.s. c 217 § 2.]

81.75.030 Services available—Terms of usage. To the extent feasible, the services available to the public at any transportation center may include taxi, auto rental, passenger trains, motor buses, travel agents, restrooms, food, telegraph, baggage handling, transfer and delivery of light freight and packages, commercial airlines, air charter, place of temporary rest for citizens and travelers (but not overnight), mail, private auto parking for users of public transportation through the transportation center, local transit, limousine, and any other use necessary to the foregoing.

Any city, town, county, public transportation benefit area authority, or municipal corporation, which elects to operate a transportation center shall operate the center for the general public good. The operator may establish the terms of usage for the various modes of transportation and for others that utilize its facilities, may make reasonable rules concerning public and private use, and may exclude all persons therefrom who refuse to comply with the terms or rules of use. The operator may own, operate, maintain, and manage a transportation center, but shall not engage in providing a transportation or other related service at the center unless otherwise authorized by law. [1977 ex.s. c 217 § 3.]

81.75.900 Severability—1977 ex.s. c 217. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 217 § 5.]

Chapter 81.77

GARBAGE AND REFUSE COLLECTION COMPANIES

Sections

- 81.77.010 Definitions.
81.77.015 Construction of phrase "garbage and refuse."
81.77.020 Compliance with chapter required—Exemption for cities and contracts therewith.
81.77.030 Supervision and regulation by commission.
81.77.040 Certificate of convenience and necessity—Existing companies.
81.77.050 Filing fees.
81.77.060 Liability and property damage insurance—Surety bond.
81.77.070 Public service company law invoked.
81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue.
81.77.090 Penalty.
81.77.100 Scope of chapter with respect to foreign or interstate commerce—Regulation of garbage or refuse collection companies.
81.77.110 Temporary certificates.
81.77.120 Service to unincorporated areas of counties.

81.77.010 Definitions.

As used in this chapter:
(1) "Motor vehicle" means any truck, trailer, semi-trailer, tractor or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting garbage and refuse, for the collection and/or disposal thereof;

(2) "Public highway" means every street, road, or highway in this state;

(3) "Common carrier" means any person who undertakes to transport garbage and refuse, for the collection and/or disposal thereof, by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules;

(4) "Contract carrier" means all garbage and refuse transporters not included under the terms "common carrier" and "private carrier," as herein defined, and further, shall include any person who under special and individual contracts or agreements transports garbage and refuse by motor vehicle for compensation;

(5) "Private carrier" means a person who, in his own vehicle, transports garbage or refuse purely as an incidental adjunct to some other established private business owned or operated by him in good faith;

(6) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any garbage or refuse is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rail or tracks;

(7) "Garbage and refuse collection company" means every person or his lessees, receivers, or trustees, owning, controlling, operating or managing vehicles used in the

business of transporting garbage and refuse for collection and/or disposal for compensation, except septic tank pumpers, over any public highway in this state whether as a "common carrier" thereof or as a "contract carrier" thereof. [1961 c 295 § 2.]

81.77.015 Construction of phrase "garbage and refuse." Whenever in this chapter the phrase "garbage and refuse" is used as a qualifying phrase or otherwise it shall be construed as meaning "garbage and/or refuse." [1965 ex.s. c 105 § 5.]

81.77.020 Compliance with chapter required—
Exemption for cities and contracts therewith. No person, his lessees, receivers, or trustees, shall engage in the business of operating as a garbage and refuse collection company in this state, except in accordance with the provisions of this chapter: *Provided*, That the provisions of this chapter shall not apply to the operations of any garbage and refuse collection company under a contract of garbage or refuse disposal with any city or town, nor to any city or town which itself undertakes the disposal of garbage or refuse. [1961 c 295 § 3.]

81.77.030 Supervision and regulation by commission. The commission shall supervise and regulate every garbage and refuse collection company in this state,

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By reviewing compliance with local solid waste management plans through letters of compliance submitted by the county legislative authority. The compliance letters shall become part of the record in any rate, compliance, or any hearing held by the commission on the issuance, revocation, or reissuance of a certificate as provided for in RCW 81.77.070.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the holder of any certificate has had notice and an opportunity to be heard, and at which it shall be proven that the holder has wilfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a garbage and refuse collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter. [1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

81.77.040 Certificate of convenience and necessity—Existing companies. No garbage and refuse collection company shall hereafter operate for the hauling of garbage and refuse for compensation without first

having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a garbage and refuse company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter 70.95 RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for garbage and refuse collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for garbage and refuse collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing garbage and refuse collection company or companies serving the territory will not provide service to the satisfaction of the commission.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a garbage and refuse collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any garbage and refuse collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter 81.80 RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such garbage and refuse collection company which has paid the plate fee and gross weight fees required by chapter 81.80 RCW for the year 1961 shall not be required to pay additional like fees under the provisions of this chapter for the remainder of such year. [1987 c 239 § 2; 1961 c 295 § 5.]

81.77.050 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: *Provided*, That such fee shall not exceed two hundred dollars. [1973 c 115 § 9; 1961 c 295 § 6.]

81.77.060 Liability and property damage insurance—Surety bond. The commission, in granting certificates to operate a garbage and refuse collection company, shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each motor propelled vehicle used or to be used in transporting garbage or refuse for compensation in the amount of not less than twenty-five thousand dollars for any recovery for personal injury by one person, and not less than ten thousand dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury by reason of one act of negligence, and not less than ten thousand dollars for damage to property of any person other than the assured, and to maintain such liability and property damage insurance or surety bond in force on each motor propelled vehicle while so used. Each policy for liability or property damage insurance or surety bond required herein shall be filed with the commission and kept in full force and effect and failure so to do shall be cause for revocation of the delinquent's certificate. [1961 c 295 § 7.]

81.77.070 Public service company law invoked. In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review, to the superior court filed therewith, appeals or mandate filed with the supreme court of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally. [1961 c 295 § 8.]

81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue. Every garbage and refuse collection company shall, on or before the 1st day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to eight-tenths of one percent of the amount of gross operating revenue: *Provided*, That the fee shall in no case be less than one dollar.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before March 1st of any year in which it determines that the moneys then in the garbage and refuse collection companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [1971 ex.s. c 143 § 3; 1969 ex.s. c 210 § 11; 1963 c 59 § 12; 1961 c 295 § 9.]

81.77.090 Penalty. Every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or any part or provision thereof, is guilty of a gross misdemeanor. [1961 c 295 § 10.]

81.77.100 Scope of chapter with respect to foreign or interstate commerce—Regulation of garbage or refuse collection companies. Neither this chapter nor any provision thereof shall apply, or be construed to apply, to commerce with foreign nations or commerce among the several states except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress.

However, in order to protect public health and safety and to ensure garbage and refuse collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all garbage or refuse collection companies conducting business in the state. [1985 c 436 § 2; 1961 c 295 § 11.]

81.77.110 Temporary certificates. The commission may with or without a hearing issue temporary certificates to engage in the business of operating a garbage and refuse collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other garbage and refuse collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate. [1965 ex.s. c 105 § 2.]

81.77.120 Service to unincorporated areas of counties. A county legislative authority shall periodically comment to the commission in writing concerning the authority's perception of the adequacy of service being provided by regulated franchisees serving the unincorporated areas of the county. The county legislative authority shall also receive and forward to the commission all letters of comment on services provided by regulated franchise holder(s) serving unincorporated areas of the county. Any such written comments or letters shall become part of the record of any rate, compliance, or any

other hearing held by the commission on the issuance, revocation, or reissuance of a certificate provided for in RCW 81.77.040. [1987 c 239 § 3.]

Reciprocal or proportional registration of vehicles: Chapter 46.85 RCW.

Taxation of motor carriers of freight for hire—Allocation of gross receipts: RCW 35.21.840.

Chapter 81.80 MOTOR FREIGHT CARRIERS

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81.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Person" means and includes an individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

(2) "Motor vehicle" means any truck, trailer, semi-trailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load, or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail, and express transported on the vehicles of auto transportation companies carrying passengers.

(3) "Public highway" means every street, road, or highway in this state.

(4) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

(5) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as herein defined in paragraph (4) and paragraph (6), and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(6) A "private carrier" is a person who transports by his own motor vehicle, with or without compensation therefor, property which is owned or is being bought or sold by such person, or property of which such person is the seller, purchaser, lessee, or bailee where such transportation is incidental to and in furtherance of some other primary business conducted by such person in good faith.

(7) "Motor carrier" means and includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as herein defined.

(8) "Exempt carrier" means any person operating a vehicle exempted from certain provisions of this chapter under RCW 81.80.040.

(9) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rail or tracks.

(10) "Commercial zone" means an area encompassing one or more cities or towns and environs adjacent thereto established pursuant to RCW 81.80.400 as now or hereafter amended.

(11) "Terminal area" means an area including one or more cities or towns and environs adjacent thereto established pursuant to RCW 81.80.400 as now or hereafter amended.

(12) "Common carrier" and "contract carrier" include persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders. [1982 c 71 § 1; 1967 c 69 § 1; 1961 c 14 § 81.80.010. Prior: 1937 c 166 § 2; 1935 c 184 § 2; RRS § 6382-2.]

Severability—1982 c 71: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 71 § 5.]

Severability—1967 c 69: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 69 § 4.]

81.80.020 Declaration of policy. The business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest. The rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that more complete regulation should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that congestion on highways may be minimized; that the shippers of the state may be provided with a stabilized service and rate structure; that sound economic conditions in such transportation and among such carriers may be fostered in the public interest; that adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices may be promoted; that the common carriage of commodities by motor carrier may be preserved in the public interest; that the relations between, and transportation by and regulation of, motor carriers and other carriers may be improved and coordinated so that the highways of the state of Washington may be properly developed and preserved, and the public may be assured adequate, complete, dependable and stable transportation service in all its phases. [1961 c 14 § 81.80.020. Prior: 1937 c 166 § 1; 1935 c 184 § 1; RRS § 6382-1.]

81.80.030 Hidden transportation charges. Operators of motor vehicles excluded from the term "private carrier," other than "common carriers" shall not be compelled to dedicate their property to the business of public transportation and subject themselves to all the duties and burdens imposed by this chapter upon "common carriers," but where they recover the cost of transportation through price differentials or in any other direct or indirect manner and such transportation cost recovery unreasonably endangers the stability of rates and the essential transportation service involving the movement of commodities over the same route or routes by other types of carriage, then such transportation costs, attempted to be recovered, shall not be less than the rate, fare or charge regularly established by the department

for such transportation service if given by other types of carriers, it being the intention of the legislature to foster a stable rate structure free of discriminations for the shippers of the state of Washington. [1961 c 14 § 81.80.030. Prior: 1937 c 166 § 3; RRS § 6382-2a.]

81.80.040 Exempt vehicles. The provisions of this chapter, except where specifically otherwise provided, and except the provisions providing for licenses, shall not apply to:

(1) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

(2) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

(3) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

(4) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(5) Motor vehicles specially constructed for towing disabled vehicles or wrecking and not otherwise used in transporting goods for compensation;

(6) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(7) Motor vehicles when transporting exclusively water in connection with construction projects only;

(8) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services. [1984 c 171 § 1; 1979 ex.s. c 6 § 1; 1963 c 59 § 7; 1961 c 14 § 81.80.040. Prior: 1957 c 205 § 4; 1949 c 133 § 1; 1947 c 263 § 1; 1937 c 166 § 4; 1935 c 184 § 3; Rem. Supp. 1949 § 6382-3.]

81.80.045 Exemption—Freight consolidators. (1) Except as provided in subsections (2) and (3) of this section, the provisions of this chapter shall not apply to

the operations of a shipper or a group or association of shippers in consolidating or distributing freight for themselves or for their members on a nonprofit basis for the purpose of securing the benefits of carload, truckload, or other volume rates, when the services of a common carrier are used for the transportation of such shipments.

(2) Every shipper or group or association of shippers claiming this exemption shall file with the commission on an annual basis a statement of nonprofit status and such proof of that status as the commission may by rule require.

(3) The commission may examine the books and records of any shipper or group or association of shippers claiming exemption under this section solely for the purpose of investigating violations of this section. [1979 ex.s. c 138 § 1.]

81.80.050 Compliance required. It shall be unlawful for any person to operate as a "motor carrier" on any public highway of this state except in accordance with the provisions of this chapter. [1961 c 14 § 81.80.050. Prior: 1935 c 184 § 4; RRS § 6382-4.]

81.80.060 Combination of services. Every person who engages for compensation to perform a combination of services a substantial portion of which includes transportation of property of others upon the public highways shall be subject to the jurisdiction of the commission as to such transportation and shall not engage upon the same without first having obtained a common carrier or contract carrier permit to do so. An example of such a combination of services shall include, but not be limited to, the delivery of household appliances for others where the delivering carrier also unpacks or uncrates the appliances and makes the initial installation thereof. Every person engaging in such a combination of services shall advise the commission what portion of the consideration is intended to cover the transportation service and if the agreement covering the combination of services is in writing, the rate and charge for such transportation shall be set forth therein. The rates or charges for the transportation services included in such combination of services shall be subject to control and regulation by the commission in the same manner that the rates of common and contract carriers are now controlled and regulated. Any person engaged in extracting and/or processing and, in connection therewith, hauling materials exclusively for the maintenance, construction or improvement of a public highway shall not be deemed to be performing a combination of services. [1969 ex.s. c 210 § 17; 1969 c 33 § 1. Prior: 1967 ex.s. c 145 § 77; 1967 c 69 § 2; 1965 ex.s. c 170 § 40; 1961 c 14 § 81.80.060; prior: 1937 c 166 § 5; RRS § 6382-4a.]

Severability—1967 c 69: See note following RCW 81.80.010.

81.80.070 Grant or denial of permit. No "common carrier," "contract carrier," or "temporary carrier" shall operate for the transportation of property for compensation in this state without first obtaining from the commission a permit so to do. Permits heretofore issued or

hereafter issued to any carrier, shall be exercised by said carrier to the fullest extent so as to render reasonable service to the public. Applications for common or contract carrier permits or extensions thereof shall be on file for a period of at least thirty days prior to the granting thereof unless the commission finds that special conditions require the earlier granting thereof.

A permit or extension thereof shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the services proposed and conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, and that such operations will be consistent with the public interest, and, in the case of common carriers, that the same are or will be required by the present or future public convenience and necessity, otherwise such application shall be denied.

Nothing contained in this chapter shall be construed to confer upon any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state. [1963 c 242 § 1; 1961 c 14 § 81.80.070. Prior: 1953 c 95 § 17; 1947 c 264 § 2; 1941 c 163 § 1; 1937 c 166 § 6; 1935 c 184 § 5; Rem. Supp. 1947 § 6382-5.]

81.80.080 Application for permit. Application for permits shall be made to the commission in writing and shall state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in and such other information as the commission may require, and in case such application is that of a "contract carrier" shall have attached thereto the original or duly verified copies of all contracts to furnish transportation covered by such application. [1961 c 14 § 81.80.080. Prior: 1935 c 184 § 6; RRS § 6382-6.]

81.80.090 Form of application—Filing fees. The commission shall prescribe forms of application for permits and for extensions thereof for the use of prospective applicants, and for transfer of permits and for acquisition of control of carriers holding permits, and shall make regulations for the filing thereof. Any such application shall be accompanied by such filing fee as the commission may prescribe by rule: *Provided*, That such fee shall not exceed two hundred dollars. [1973 c 115 § 10; 1961 c 14 § 81.80.090. Prior: 1941 c 163 § 2; 1937 c 166 § 7; 1935 c 184 § 7; RRS § 6382-7.]

81.80.100 Form and contents of permit. Permits granted by the commission shall be in such form as the commission shall prescribe and shall set forth the name and address of the person to whom the permit is granted, the nature of the transportation service to be engaged in and the principal place of operation, termini or route to be used or territory to be served by the operation. No permit holder shall operate except in accordance with

the permit issued to him. [1961 c 14 § 81.80.100. Prior: 1935 c 194 § 8; RRS § 6382-8.]

81.80.110 Limitation on renewal of application. No person whose application for a permit has been denied after hearing under any of the provisions of this chapter shall be eligible to renew the application for a period of six months from the date of the order denying such application. [1961 c 14 § 81.80.110. Prior: 1947 c 264 § 3; 1935 c 184 § 9; Rem. Supp. 1947 § 6382-9.]

81.80.120 Classification of carriers. The commission may from time to time establish such just and reasonable classifications of the groups of carriers included in the terms "common carriers" and "contract carriers" as the special nature of the services performed by such carriers shall require, and such just and reasonable rules, regulations and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or advisable in the public interest. [1961 c 14 § 81.80.120. Prior: 1937 c 166 § 8; 1935 c 184 § 10; RRS § 6382-10.]

81.80.130 Regulatory power of commission over common carriers. The commission shall supervise and regulate every "common carrier" in this state; make, fix, alter, and amend, just, fair, reasonable, minimum, maximum, or minimum and maximum, rates, charges, classifications, rules, and regulations for all "common carriers"; regulate the accounts, service, and safety of operations thereof; require the filing of reports and other data thereby; and supervise and regulate all "common carriers" in all other matters affecting their relationship with competing carriers of every kind and the shipping and general public: *Provided*, The commission may by order approve rates filed by common carriers in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, or prescribe rates covering such commodities and services. [1961 c 14 § 81.80.130. Prior: 1957 c 205 § 5; 1937 c 166 § 9; 1935 c 184 § 11; RRS § 6382-11.]

81.80.140 Regulatory power over contract carriers. The commission is hereby vested with power and authority, and it is hereby made its duty, to supervise and regulate every "contract carrier" in this state; to fix, alter and amend, just, fair and reasonable classifications, rules and regulations and minimum rates and charges of each such "contract carrier"; to regulate the account, service and safety of operations thereof; and require the filing of reports and of other data thereby; and to supervise and regulate such "contract carriers" in all other matters affecting their relationship with both the shipping and the general public. [1961 c 14 § 81.80.140. Prior: 1937 c 166 § 11; 1935 c 184 § 12; RRS § 6382-12.]

81.80.150 Tariffs to be compiled and sold by commission. The commission shall make, fix, construct,

compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules, and regulations to be used by all common carriers. In compiling such tariffs it shall include within any given tariff compilation such carriers, groups of carriers, commodities, or geographical areas as it determines shall be in the public interest. Such compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to such tariffs or reissues thereof in accordance with the orders of the commission: *Provided*, That the commission, upon good cause shown, may establish temporary rates, charges, or classification changes which may be made permanent only after publication in an applicable tariff for not less than sixty days, and determination by the commission thereafter that the rates, charges or classifications are just, fair, and reasonable: *Provided further*, That temporary rates shall not be made permanent except upon notice and hearing if within sixty days from date of publication, a shipper or common carrier, or representative of either, shall file with the commission a protest alleging such temporary rates to be unjust, unfair, or unreasonable. For purposes of this proviso, the publication of temporary rates in the tariff shall be deemed adequate public notice. Nothing herein shall be construed to prevent the commission from proceeding on its own motion, upon notice and hearing, to fix and determine just, fair, and reasonable rates, charges, and classifications. The proper tariff, or tariffs, applicable to a carrier's operations shall be available to the public at each agency and office of all common carriers operating within this state. Such compilations and publications shall be sold by the commission for a fee to be determined annually and not to exceed the cost of this service. Corrections to such publications shall be furnished to all subscribers to tariffs in the form of corrected pages to the tariffs, supplements, or reissues thereof. In addition to the initial charge for each tariff, the commission shall charge an annual maintenance fee not to exceed the cost of issuing corrections or supplements and mailing them to subscribers: *Provided*, That copies may be furnished free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given free, shall be issued and distributed under rules and regulations to be fixed by the commission: *Provided further*, That the commission may by order authorize common carriers to publish and file tariffs with the commission and be governed thereby in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish, and distribute tariffs covering such commodities and services. [1981 c 116 § 2; 1973 c 115 § 11; 1961 c 14 § 81.80-150. Prior: 1959 c 248 § 5; 1957 c 205 § 6; 1947 c 264 § 4; 1941 c 163 § 3; 1937 c 166 § 10; Rem. Supp. 1947 § 6382-11a.]

81.80.170 Temporary permits. The commission may issue temporary permits to temporary "common carriers" or "contract carriers" for a period not to exceed one hundred eighty days, but only after it finds that the issuance of such temporary permits is consistent with the public interest. It may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter.

The commission may also issue temporary permits pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more common carriers or contract carriers or of a purchase or lease of one or more common carriers or contract carriers. [1963 c 242 § 2; 1961 c 14 § 81.80.170. Prior: 1953 c 95 § 18; 1947 c 264 § 5; 1937 c 166 § 12; 1935 c 184 § 14; Rem. Supp. 1947 § 6382-14.]

81.80.175 Permits for farm to market hauling. A permit or extension thereof for hauling unprocessed or unmanufactured agricultural commodities and livestock for a distance not to exceed eighty miles from the point of production to primary markets shall be issued to any qualified applicant therefor, authorizing the whole or part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the services proposed and conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, and that such operations will be consistent with the public interest. [1963 c 242 § 5.]

81.80.190 Insurance or deposit of security. The commission shall in the granting of permits to "common carriers" and "contract carriers" under this chapter require such carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit such security, for such limits of liability and upon such terms and conditions as the commission shall determine to be necessary for the reasonable protection of the public against damage and injury for which such carrier may be liable by reason of the operation of any motor vehicle.

In fixing the amount of said insurance policy or policies, or deposit of security, the commission shall give due consideration to the character and amount of traffic and the number of persons affected and the degree of danger which the proposed operation involves.

If the commission is notified of the cancellation, revocation, or any other changes in the required insurance or security of a common carrier or contract carrier with a permit to transport radioactive or hazardous materials, the commission shall immediately notify the state radiation control agency of the change. [1986 c 191 § 5; 1961 c 14 § 81.80.190. Prior: 1935 c 184 § 16; RRS § 6382-16.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

81.80.200 Conditions may be attached to permits. The commission is hereby vested with power and authority in issuing permits to any of the carriers classified in accordance with RCW 81.80.120 to attach thereto such terms and conditions and to require such insurance or security as it may deem necessary for the protection of the public highways and to be for the best interest of the shipping and the general public. All such regulations and conditions shall be deemed temporary and may be revoked by the commission upon recommendation of the state or county authorities in charge of highway maintenance or safety when in the judgment of such authorities such revocation is required in order to protect the public or preserve the public highways. [1961 c 14 § 81.80.200. Prior: 1937 c 166 § 14; 1935 c 184 § 17; RRS § 6382-17.]

81.80.211 Hours of operators—Rules and regulations. The commission may adopt rules and regulations relating to the hours of duty of motor carrier drivers and operators. [1961 c 14 § 81.80.211. Prior: 1953 c 95 § 23.]

81.80.220 Tariff rates must be charged. No "common carrier" or "contract carrier" shall collect or receive a greater, less or different remuneration for the transportation of property or for any service in connection therewith than the rates and charges which shall have been legally established and filed with the commission, or as are specified in the contract or contracts filed, as the case may be, nor shall any such carrier refund or remit in any manner or by any device any portion of the rates and charges required to be collected by each tariff or contract or filing with the commission.

The commission may check the records of all carriers under this chapter and of those employing the services of the carrier for the purpose of discovering all discriminations, under or overcharges and rebates, and may suspend or revoke permits for violations of this section.

The commission may refuse to accept any time schedule or tariff or contract that will, in the opinion of the commission, limit the service of a carrier to profitable trips only or to the carrying of high class commodities in competition with other carriers who give a complete service and thus afford one carrier an unfair advantage over a competitor. [1961 c 14 § 81.80.220. Prior: 1937 c 166 § 16; 1935 c 184 § 19; RRS § 6382-19.]

81.80.230 Penalty for rebating—Procedures for collection. Any person, whether carrier subject to the provisions of this chapter, shipper, or consignee, or any officer, employee, agent, or representative thereof, who shall offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device shall assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of property

subject to this chapter for less than the applicable rate, fare, or charge, or who shall fraudulently seek to evade or defeat regulation as in this chapter provided for motor carriers shall be subject to a civil penalty of not more than one hundred dollars for each violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation every day's continuance shall be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under this section and subject to the penalty provided for in this section.

The penalty provided for in this section shall become due and payable when the person incurring the penalty receives a notice in writing from the commission describing the violation with reasonable particularity and advising the person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the penalty upon such terms as the commission in its discretion deems proper. The commission has authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the penalty is not paid to the commission within fifteen days after receipt of notice imposing the penalty or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in this section. All penalties recovered under this section shall be paid into the state treasury and credited to the public service revolving fund. [1980 c 132 § 2; 1961 c 14 § 81.80.230. Prior: 1947 c 264 § 6; Rem. Supp. 1947 § 6382-19a.]

Effective date—1980 c 132: See note following RCW 81.29.020.

81.80.240 Joint through rates. The commission shall have power and authority to require a common carrier by motor vehicle, railroad, express or water to establish reasonable through rates with other common carriers by motor vehicle, railroad, express and water, and to provide safe and adequate service, equipment and facilities for the transportation of property; to establish and enforce just and reasonable individual and joint rates, charges and classifications, and just and reasonable regulations and practices relating thereto, and in case of such joint rates, fares and charges to establish just, reasonable and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. In ordering and establishing joint through rates between different types of carriers the commission shall give full effect to the lower cost of transportation of property by any type of carrier and shall reflect such lower cost by

differentials under a through rate of the higher cost carrier. [1961 c 14 § 81.80.240. Prior: 1937 c 166 § 17; 1935 c 184 § 20; RRS § 6382-20.]

81.80.250 Bond to protect shippers and consignees. The commission may, under such rules and regulations as it shall prescribe, require any common carrier to file a surety bond, or deposit security, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers and consignees for all money belonging to shippers and consignees, and coming into the possession of such carrier in connection with its transportation service. Any common carrier which may be required by law to compensate a shipper or consignee for any loss, damage or default for which a connecting common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond or deposit of security to the extent of the sum so paid. [1961 c 14 § 81.80.250. Prior: 1935 c 184 § 21; RRS § 6382-21.]

81.80.260 Operation in more than one class. It shall be unlawful for any person to operate any vehicle at the same time in more than one class of operation, except upon approval of the commission and a finding that such operation will be in the public interest.

No "exempt carrier" as such shall transport property for compensation except as hereinabove provided. [1967 c 69 § 3; 1961 c 14 § 81.80.260. Prior: 1935 c 184 § 22; RRS § 6382-22.]

Severability—1967 c 69: See note following RCW 81.80.010.

81.80.270 Transfer, assignment of permits—Acquisition of carrier holding permit, commission approval—Duties on cessation of operation. No permit issued under the authority of this chapter shall be construed to be irrevocable. Nor shall such permit be subject to transfer or assignment except upon a proper showing that property rights might be affected thereby, and then in the discretion of the commission.

No person, partnership or corporation, singly or in combination with any other person, partnership or corporation, whether a carrier holding a permit or otherwise, or any combination of such, shall acquire control or enter into any agreement or arrangement to acquire control of a common or contract carrier holding a permit through ownership of its stock or through purchase, lease or contract to manage the business, or otherwise except after and with the approval and authorization of the commission: *Provided*, That upon the dissolution of a partnership, which holds a permit, because of the death, bankruptcy, or withdrawal of a partner where such partner's interest is transferred to his spouse or to one or more remaining partners, or in the case of a corporation which holds a permit, in the case of the death of a shareholder where a shareholder's interest upon death is transferred to his spouse or to one or more of the remaining shareholders, the commission shall transfer the permit to the newly organized partnership which is substantially composed of the remaining partners, or continue the corporation's permit without making the

proceeding subject to hearing and protest. In all other cases any such transaction either directly or indirectly entered into without approval of the commission shall be void and of no effect, and it shall be unlawful for any person seeking to acquire or divest control of such permit to be a party to any such transaction without approval of the commission.

Every carrier who shall cease operation and abandon his rights under the permits issued him shall notify the commission within thirty days of such cessation or abandonment, and return to the commission the identification cards issued to him. [1973 c 115 § 12; 1969 ex.s. c 210 § 12; 1965 ex.s. c 134 § 1; 1963 c 59 § 6; 1961 c 14 § 81.80.270. Prior: 1959 c 248 § 24; 1937 c 166 § 18; 1935 c 184 § 23; RRS § 6382-23.]

81.80.272 Transfer of decedent's interest—Temporary continuance of operations. Except as otherwise provided in RCW 81.80.270 any permit granted to any person under this chapter and held by that person alone or in conjunction with others other than as stockholders in a corporation at the time of his death shall be transferable the same as any other right or interest of the person's estate subject to the following:

(1) Application for transfer shall be made to the commission in such form and contain such information as the commission shall prescribe. The transfer described in any such application shall be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transferee is fit, willing and able properly to perform the services authorized by the permit to be transferred and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, otherwise the application shall be denied.

(2) Temporary continuance of motor carrier operations without prior compliance with the provisions of this section will be recognized as justified by the public interest in cases in which the personal representatives, heirs or surviving spouses of deceased persons desire to continue the operations of the carriers whom they succeed in interest subject to such reasonable rules and regulations as the commission may prescribe.

In case of temporary continuance under this section the successor shall immediately procure insurance or deposit security as required by RCW 81.80.190.

Immediately upon any such temporary continuance of motor carrier operations and in any event not more than thirty days thereafter the successor shall give notice of the succession by written notice to the commission containing such information as the commission shall prescribe. [1973 c 115 § 13; 1965 ex.s. c 134 § 2.]

81.80.280 Cancellation of permits. Permits may be canceled, suspended, altered or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or his or its agent has repeatedly violated this chapter, the rules and regulations of the commission or the motor laws of this state

or of the United States, or the permittee has made unlawful rebates or has not conducted his operation in accordance with the permit granted him. Any person may at the instance of the commission be enjoined from any violation of the provisions of this chapter, or any order, rule or regulation made by the commission pursuant to the terms hereof. If such suit be instituted by the commission no bond shall be required as a condition to the issuance of such injunction. [1987 c 209 § 1; 1961 c 14 § 81.80.280. Prior: 1935 c 184 § 24; RRS § 6382-24.]

81.80.290 Rules and regulations. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter to carry out the purposes thereof, applicable to any and all "motor carriers," or to any persons transporting property by motor vehicle for compensation even though they do not come within the term "motor carrier" as herein defined.

The commission shall mail each holder of a permit under this chapter a copy of such rules and regulations. [1961 c 14 § 81.80.290. Prior: 1935 c 184 § 25; RRS § 6382-25.]

Violation of rules pertaining to vehicle equipment on motor carriers transporting hazardous material: RCW 46.48.175.

81.80.300 Identification cab card, identification decal, stamp, or number—Mandatory—Fees, collection, disposition—Rules and regulations. The commission shall prescribe an identification cab card and identification decal or stamp or number which must be carried within the cab of each motive power vehicle of each motor carrier required to have a permit under this chapter.

The identification cab card and the decal or stamp or number provided for herein may be in such form and contain such information as required by the commission.

It shall be unlawful for any "common carrier" or "contract carrier" to operate any motor vehicle within this state unless there is carried within the cab of the motive power vehicle, either operating as a solo vehicle or in combination with trailers, the identification cab card and decal or stamp or number required by this section and the payment by such carrier of a total fee of three dollars for each such decal or stamp or number plus the applicable gross weight fee prescribed by RCW 81.80.320: *Provided*, That as to equipment operated between points in this state and points outside the state exclusively in interstate commerce, and as to equipment operated between points in this state and points outside the state in interstate commerce as well as points within this state in intrastate commerce, the commission may adopt rules and regulations specifying an alternative schedule of fees to that specified in RCW 81.80.320 as it may find to be reasonable and specifying the method of evidencing payment of such fees.

The commission may adopt rules and regulations imposing a reduced schedule of fees for short term operations, requiring reports of carriers, and imposing such conditions as the public interest may require with respect to the operation of such vehicles.

The commission shall not be required to collect the excise tax prescribed by RCW 82.44.020 for any fees collected under this chapter.

The decal or stamp or number required herein shall be issued annually under the rules and regulations of the commission, and shall be affixed to the identification cab card required by this section not later than February 1st of each year: *Provided*, That such decal or stamp or number may be issued for the ensuing calendar year on and after the first day of November preceding and may be used from the date of issue until February 1st of the succeeding calendar year for which the same was issued.

It shall be unlawful for the owner of said permit, his agent, servant or employee, or any other person to use or display any identification cab card and decal or stamp or number, the permit number or other insignia of authority from the commission after said permit has expired, been canceled or disposed of, or to operate any vehicle under permit without such identification cab card and decal or stamp or number.

The commission shall collect all fees provided in this section, and all such fees shall be deposited in the state treasury to the credit of the public service revolving fund. [1985 c 7 § 152; 1977 ex.s. c 63 § 1; 1971 ex.s. c 143 § 4; 1969 ex.s. c 210 § 13; 1967 c 170 § 1; 1961 c 14 § 81.80.300. Prior: 1935 c 184 § 26; RRS § 6382-26.]

Effective date—1971 ex.s. c 143: "Sections 4, 5, 6 and 7 of this 1971 amendatory act shall take effect on October 31, 1971." [1971 ex.s. c 143 § 9.]

81.80.312 Interchange of trailers, semitrailers, or power units—Interchange agreement, approval, restrictions—Procedure when no agreement. No carrier shall interchange its trailers or semitrailers with any other carrier without first filing an interchange agreement with and securing approval thereof by the commission. The interchange agreement providing for the transfer or interchange of trailers or semitrailers pursuant thereto shall be authorized only on through movements between connecting regular route carriers.

No carrier shall interchange its power units, with or without drivers, with any other carrier, and no carrier shall interchange its trailers or semitrailers with any other carrier beyond that authorized in the preceding paragraph without first filing an interchange agreement with and securing approval thereof under rules adopted by the commission: *Provided*, That such approval shall be given only for interchanges between connecting regular route carriers and only within an area which the commission has, following hearing, found to be within the distribution area around a city or cities one of which has a population of not less than one hundred thousand, and has further found it consistent with the public interest to allow such interchange agreements due to a lack of service or a resultant improvement in service and operating economies: *Provided further*, That such interchange agreements are limited to traffic having both origin and final destination within such area and the points or point of interchange are located within such area and

are common to both carriers and are named in the interchange agreement.

Any carrier operating any motive power vehicle owned by another person or party but not operated pursuant to an interchange agreement shall secure identification cab cards and decals or stamps or numbers in his own name for such motive power vehicles as required by RCW 81.80.300. [1969 ex.s. c 210 § 16; 1967 c 170 § 2; 1961 c 14 § 81.80.312. Prior: 1953 c 95 § 20.]

81.80.318 Single trip transit permit. Any motor carrier engaged in this state in the casual or occasional carriage of property in interstate or foreign commerce, who would otherwise be subject to all of the requirements of this chapter, shall be authorized to engage in such casual or occasional carriage, upon securing from the commission a single trip transit permit, valid for a period not exceeding ten days, which shall authorize a one way trip in transporting property for compensation between points in the state of Washington and points in other states, territories, or foreign countries.

No identification cab cards and decals or stamps or numbers and no regulatory fees other than as provided in this section shall be required for such permit. The permit must be carried in the cab of the motive power vehicle.

The permit shall be issued upon application to the commission or any of its duly authorized agents upon payment of a fee of ten dollars and the furnishing of proof of possession of public liability and property damage insurance in limits of at least twenty-five thousand dollars, for injury or death of any one person, and subject to such limit as to any one person, for one hundred thousand dollars for injury or death of all persons caused by any one accident and for ten thousand dollars for all damages to property caused by one accident. Such proof may consist of an insurance policy or a certificate of insurance.

The commission shall not be required to collect the excise tax prescribed by RCW 82.44.020 on any vehicle subject only to the payment of this fee. [1985 c 7 § 153; 1967 c 170 § 3; 1963 c 59 § 8; 1961 c 14 § 81.80.318. Prior: 1955 c 79 § 10.]

81.80.320 Gross weight fees. In addition to all other fees to be paid by him, every "common carrier" and "contract carrier" shall pay to the commission each year prior to receiving his identification decal or stamp or number for each motive power vehicle operated by him, based upon the maximum gross weight thereof as set by the carrier in his application for his regular license plates, plus any additional tonnage or log tolerance permits, the following fees:

Less than 4,000 pounds	\$ 7.00
4,000 pounds or more and less than 8,000 pounds	9.00
8,000 pounds or more and less than 12,000 pounds	11.00
12,000 pounds or more and less than 16,000 pounds	13.00

16,000 pounds or more and less than 20,000 pounds	15.00
20,000 pounds or more and less than 24,000 pounds	17.00
24,000 pounds or more and less than 28,000 pounds	19.00
28,000 pounds or more and less than 32,000 pounds	21.00
32,000 pounds or more and less than 36,000 pounds	23.00
36,000 pounds or more and less than 40,000 pounds	30.00
40,000 pounds or more and less than 44,000 pounds	32.00
44,000 pounds or more and less than 48,000 pounds	34.00
48,000 pounds or more and less than 52,000 pounds	36.00
52,000 pounds or more and less than 56,000 pounds	38.00
56,000 pounds or more and less than 60,000 pounds	40.00
60,000 pounds or more and less than 64,000 pounds	42.00
64,000 pounds or more and less than 68,000 pounds	44.00
68,000 pounds or more and less than 72,000 pounds	46.00
72,000 pounds or more and less than 76,000 pounds	48.00

In the event that trailers or semitrailers are separately licensed for gross weight and not included within the licensed gross weight of the motive power vehicle as prescribed above, the fees provided herein shall be computed on the basis of the licensed gross weight of the trailer or semitrailer, plus any additional tonnage or log tolerance, and a separate identification cab card will be issued in the same manner as for a motive power vehicle under RCW 81.80.300.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before November 1st of any year in which it determines that the moneys then in the motor carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers during the next succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees as previously reduced should be increased such increase, not in any event to exceed the schedule set forth in this section, may be effected by a similar general order entered before November 1st. Any decrease or increase of gross weight fees as herein authorized, shall be made on a proportional basis as applied to the various classifications of equipment.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [1971 ex.s. c 143 § 5; 1969 ex.s. c 210 § 14; 1967 c 170 § 4; 1961 c 14 § 81.80.320. Prior: 1959 c 248 § 9; 1957 c 205 § 7; 1955 c 79 § 8; 1943 c 104 § 1; 1937 c 166 § 20; 1935 c 184 § 28; Rem. Supp. 1943 § 6382-28.]

Effective date—1971 ex.s. c 143: See note following RCW 81.80.300.

81.80.330 Enforcement of chapter. The commission is hereby empowered to administer and enforce all provisions of this chapter and to inspect the vehicles, books and documents of all "motor carriers" and the books, documents and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ such auditors, inspectors, clerks and assistants as it may deem necessary for the enforcement of this chapter, and it shall be the duty of the Washington state patrol to assist in the enforcement of this chapter, and the duty of the attorney general to assign at least one assistant to the exclusive duty of assisting the commission in the enforcement of this chapter, and the prosecution of persons charged with the violation thereof. It shall be the duty of the Washington state patrol and the sheriffs of the counties to make arrests and the county attorneys to prosecute violations of this chapter. [1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

Effective date—1980 c 132: See note following RCW 81.29.020.

81.80.340 Public service law invoked. In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state, considered and disposed of by said courts in the manner, under the conditions and subject to the limitations and with the effect specified in this title. The right of review and appeal hereby conferred shall be available to any motor carriers, complainant, protestant or other person adversely affected by any decision or order of the commission. [1971 c 81 § 147; 1961 c 14 § 81.80.340. Prior: 1947 c 264 § 9; 1935 c 184 § 30; Rem. Supp. 1947 § 6382-30.]

81.80.345 Venue—Hearings on applications. Hearings on applications shall be heard in the county or adjoining county of the residence of the applicant. [1963 c 242 § 3.]

81.80.346 Venue—Appeals from rulings and orders. Appeals from rulings and orders shall be heard in the superior court of the county of the residence of the

applicant or Thurston county at the option of the applicant. [1963 c 242 § 4.]

81.80.355 Unlawful advertising—Penalty. Any person not holding a permit authorizing him to operate as a common carrier, contract carrier, or temporary carrier for the transportation of property for compensation in this state, or an exempt carrier, who displays on any building, vehicle, billboard or in any manner, any advertisement of, or by circular, letter, newspaper, magazine, poster, card or telephone directory, advertises the transportation of property for compensation shall be guilty of a misdemeanor and punishable as such. [1961 c 14 § 81.80.355. Prior: 1957 c 205 § 8; 1953 c 95 § 22.]

81.80.360 Procedure, penalties—General statute invoked. All applicable provisions of this title, relating to procedure, powers of the department and penalties, shall apply to the operation and regulation of persons under this chapter, except insofar as such provisions may conflict with provisions of this chapter and rules and regulations issued thereunder by the commission. [1961 c 14 § 81.80.360. Prior: 1937 c 166 § 22; RRS § 6382–31a.]

81.80.370 Application to interstate commerce. This chapter shall apply to persons and motor vehicles engaged in interstate commerce to the full extent permitted by the Constitution and laws of the United States. [1961 c 14 § 81.80.370. Prior: 1935 c 184 § 32; RRS § 6382–32.]

81.80.371 Carriers must register authority from interstate commerce commission. It shall be unlawful for any carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate authority from the Interstate Commerce Commission, if such authority is required, and without first having registered such authority, if any, with the commission.

It shall also be unlawful for a carrier to perform a transportation service for compensation on the public highways of this state as an interstate carrier of commodities included in the exemptions provided in section 203(b) of the Interstate Commerce Act without having first registered as such a carrier with the commission.

Such registration shall be granted upon application, without hearing, upon payment of the appropriate filing fee prescribed by this chapter for other applications for operating authority. [1963 c 59 § 9.]

81.80.375 Fee when federal requirements necessitate uniform forms evidencing interstate operations. Where by virtue of federal requirements uniform forms are to be utilized to evidence lawfulness of interstate operations, the commission shall charge a fee for such forms equal to the cost to the commission. [1971 ex.s. c 143 § 6.]

Effective date—1971 ex.s. c 143: See note following RCW 81.80.300.

81.80.380 Cooperation with federal government. The commission is hereby authorized and directed to cooperate with the federal government and the interstate commerce commission of the United States or any other commission or organization delegated or authorized to regulate interstate or foreign commerce by motor carriers to the end that the transportation of property by motor carriers in interstate or foreign commerce into and through the state of Washington may be regulated and the laws of the United States and the state of Washington enforced and administered cooperatively in the public interest. [1961 c 14 § 81.80.380. Prior: 1935 c 184 § 33; RRS § 6382–33.]

81.80.381 Regulation pursuant to act of congress or agreement with interstate commerce commission. In addition to such authority concerning interstate commerce as is granted to it by other provisions of this chapter, the commission may regulate motor freight carriers in interstate commerce on Washington highways under authority of and in accordance with the provisions of any act of congress vesting in or delegating to the commission such authority as an agency of the United States government or pursuant to agreement with the Interstate Commerce Commission. [1963 c 59 § 10.]

81.80.391 Reciprocity—Apportionment of regulatory fees. The commission, in respect to common carriers engaged in interstate commerce, may enter into reciprocal agreements with other states, the District of Columbia, territories and countries which are authorized to make like agreements, to apportion the regulatory fees of common carriers between Washington and the other states, District of Columbia, territories or countries into which such carriers operate.

The percentage of miles each such carrier operates in Washington as they bear to the total miles each such carrier operates in the other states, District of Columbia, territories and countries involved shall be used by the commission to determine what percentage of each of the carrier's total vehicles shall be attributable to operating in Washington as the basis for computing the total regulatory fees to be paid by each such carrier to the commission.

The commission may require each such carrier to submit under oath such information, records and data as it deems necessary for carrying out the provisions of this section. The commission's determination of the number of vehicles of each carrier to be used as the basis for computing the regulatory fees payable by each carrier shall be final.

All moneys collected pursuant to this section shall be deposited in the state treasury to the credit of the public service revolving fund. [1961 c 14 § 81.80.391. Prior: 1953 c 129 § 1.]

81.80.400 Commercial zones and terminal areas—Common carriers doing business within zones prior to designation of zone—Persons seeking to serve as common carriers after designation. There is hereby established for each city and town within the state a

commercial zone and terminal area coextensive with the present geographic limits of the commercial zone and terminal area established for each such city and town by the interstate commerce commission pursuant to section 10526(b)(i) (formerly 203(b)(8)) of the Interstate Commerce Act. The commission shall promulgate and publish within ninety days of June 10, 1982, appropriate rules designating the area of the commercial zones and terminal areas established hereby. Any common carrier of general freight who, on the effective date of rules promulgated by the commission hereunder, has general freight authority between any two points in such zone shall have the authority to serve as a common carrier of general freight between any points within the zone at rates prescribed by the commission: *Provided, however*, That any restrictions, other than territorial restrictions, on his authority to transport general freight shall remain in full force and effect. Any person thereafter seeking to serve as a common carrier of general freight within the zone shall be subject to all the requirements of this chapter and the rules of the commission applicable to persons seeking new or extended permit authority, except as exempted by RCW 81.80.040. [1982 c 71 § 2; 1972 ex.s. c 22 § 1.]

Severability—1982 c 71: See note following RCW 81.80.010.

Severability—1972 ex.s. c 22: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 22 § 3.]

81.80.410 Commercial zones and terminal areas—Common carriers having general freight authority prior to designation. Any common carrier who, on the effective date of rules promulgated by the commission hereunder, has general freight authority between a city or town within a commercial zone or terminal area and a city or town without such zone or area may as part of inter-city service perform pickup and delivery any place in such zone or area at rates prescribed by the commission. [1982 c 71 § 3; 1972 ex.s. c 22 § 2.]

Severability—1982 c 71: See note following RCW 81.80.010.

Severability—1972 ex.s. c 22: See note following RCW 81.80.400.

81.80.420 Commercial zones and terminal areas—Expansion by commission. The commission may, by rule, expand the geographic scope of any commercial zone and/or terminal area upon a finding that public convenience and necessity require such expansion. [1982 c 71 § 4.]

Severability—1982 c 71: See note following RCW 81.80.010.

Chapter 81.84

STEAMBOAT COMPANIES

Sections

81.84.010	Certificate of convenience and necessity required.
81.84.020	Application—Hearing—Issuance of certificate.
81.84.030	Transfer, revocation of certificate.
81.84.040	Filing fees.
81.84.050	Penalties—Remission, mitigation.

Cities and towns may acquire and operate ferries: RCW 35.21.110.

Department of transportation as common carrier: RCW 47.60.220.

Excessive steam in boilers: RCW 70.54.080.

Lien on ships, equipment for labor, material, handling cargo, etc.: Chapter 60.36 RCW.

Navigation and harbor improvements: Title 88 RCW.

Privately owned ferries, county licensing: Chapter 36.53 RCW.

Tidelands, shorelands, harbor areas: Chapters 79.92, 79.94 RCW.

81.84.010 Certificate of convenience and necessity required. No steamboat company shall hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation: *Provided*, That no certificate shall be required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers and/or vehicles, are not more than ten percent of the total gross earnings of such vessel: *Provided*, That nothing herein shall be construed to affect the right of any county within this state to construct, condemn, purchase, operate or maintain, itself or by contract, agreement or lease, with any person, firm or corporation, ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, provided such operation is not over the same route or between the same districts, being served by a certificate carrier, nor shall this chapter be construed to affect, amend or invalidate any contract entered into prior to January 15, 1927, for the operation of ferries or boats upon the waters within this state, which was entered into in good faith by any county with any person, firm, or corporation, except that in case of the operation or maintenance by any county, city, town, port district, or other political subdivision by contract, agreement, or lease with any person, firm, or corporation, of ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, the commission shall have power and authority to regulate rates and services of such operation or maintenance of ferries, boats, or wharfs, to make, fix, alter or amend said rates, and to regulate service and safety of operations thereof, in the manner and to the same extent as it is empowered to regulate a steamboat company, notwithstanding the provisions of any act or parts of acts inconsistent herewith. [1961 c 14 § 81.84.010. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.020 Application—Hearing—Issuance of certificate. Upon the filing of an application the commission shall give reasonable notice to any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the

commission shall not have power to grant a certificate to operate between districts and/or into any territory already served by an existing certificate holder, unless such existing certificate holder shall fail and refuse to furnish reasonable and adequate service: *Provided*, A certificate shall be granted when it shall appear to the satisfaction of the commission that such steamboat company was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: *Provided, further*, That in case two or more steamboat companies shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules and services rendered by either of said companies, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the companies to whom such certificates are issued to the end that duplication of service be eliminated and public convenience be furthered. [1961 c 14 § 81.84.020. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.030 Transfer, revocation of certificate. No certificate or any right or privilege thereunder held, owned or obtained under the provisions of this chapter shall be sold, assigned, leased, mortgaged or in any manner transferred, either by the act of the parties or by operation of law, except upon authorization by the commission first obtained. The commission may at any time by its order duly entered after hearing had upon notice to the holder of any certificate hereunder and an opportunity to such holder to be heard, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, if the holder thereof wilfully violates or fails to observe the provisions or conditions of the certificate, or the orders, rules or regulations of the commission, or the provisions of this title. [1961 c 14 § 81.84.030. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.040 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: *Provided*, That such fee shall not exceed two hundred dollars. [1973 c 115 § 14; 1961 c 14 § 81.84.040. Prior: 1955 c 125 § 10; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

81.84.050 Penalties—Remission, mitigation. Every steamboat company and every officer, agent, or employee of any steamboat company who violates or who procures, aids or abets in the violation of any provision of this title, or any order, rule, regulation, or decision of the commission shall incur a penalty of one hundred

dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due.

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper.

If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or, if application for remission or mitigation has not been made, within fifteen days after the violator has received notice of the disposition of such application, the attorney general shall bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions except as otherwise herein provided. All penalties recovered by the state under this chapter shall be paid into the state treasury and credited to the public service revolving fund. [1961 c 14 § 81.84.050. Prior: 1937 c 169 § 6; RRS § 10361-2.]

Chapter 81.88

GAS AND OIL PIPELINES

Sections

81.88.020	Pipeline corporations—Regulation—Eminent domain.
81.88.030	Pipeline carriers regulated as common carriers.

81.88.020 Pipeline corporations—Regulation—Eminent domain. All corporations having for one of their principal purposes the construction, maintenance and operation of pipelines and appurtenances for the conveyance and transportation as common carriers of oils, gas, gasoline and other petroleum products shall be subject to control and regulation by the commission in the same manner and to the same extent as other public service corporations. The power of eminent domain is hereby conferred upon such corporations to be used for acquiring rights of way for common carrier pipelines and they shall have the right to condemn and appropriate lands and property and interests therein for their use under the same procedure as is provided for the condemnation and appropriation of private property by railway companies,

but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation and appropriation by railway companies. Any property or interest therein acquired by any corporation under the provisions of this section by the exercise of the right of eminent domain shall be used exclusively for the purposes for which it was acquired. In all actions brought under this section to enforce the right of eminent domain, courts wherein such actions are brought may give such actions preference over all other civil actions in the matter of setting the same for hearing or trial and in hearing the same. [1961 c 14 § 81.88.020. Prior: 1951 c 94 § 2; 1915 c 132 § 2; RRS § 9965.]

81.88.030 Pipeline carriers regulated as common carriers. Every person, copartnership, corporation or other association now or hereafter engaged in the business of producing from natural deposits and/or carrying or transporting natural gas and/or crude oil or petroleum or the products thereof for hire, by pipelines within this state shall be a common carrier within the meaning and subject to the provisions of this title: *Provided, however,* That the provisions of this section shall not apply to distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [1961 c 14 § 81.88.030. Prior: 1933 ex.s. c 61 § 1; RRS § 9965-1.]

Chapter 81.96

WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

Sections

81.96.010	Ratification and approval—Adherence.
81.96.020	Terms and provisions.
81.96.030	Service of secretary of transportation as state member, execution of compact.

81.96.010 Ratification and approval—Adherence. The western regional short-haul air transportation compact proposed for adoption by the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, is hereby ratified and approved and the adherence of this state to the provisions of this compact, upon its ratification and approval by at least six of the other twelve states, is hereby declared. [1972 ex.s. c 36 § 2.]

81.96.020 Terms and provisions. The terms and provisions of the compact referred to in RCW 81.96.010 are as follows:

WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

Article I PURPOSE

The party states recognize that short-haul air transportation is essential to a balanced and efficient transportation system in the West, meeting special needs

created by particular geographic and population patterns in both rural and urban areas. They further recognize that it is not economically feasible for the commercial airlines to provide a full complement of short-haul air services or to explore fully the capabilities and limitations of the various types and locations of such services. They also recognize that careful planning, experimentation, and testing are needed before appropriate short-haul air transportation can be developed for all the situations in which it would be beneficial to the economy and general welfare of the western states. To meet this need, the party states agree that a regional compact should be established for the purpose of organizing and conducting a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West.

Article II

REGIONAL COMMISSION

A. There is hereby established an agency of the party states to be known as the Western Regional Short-Haul Air Transportation Commission (hereinafter called the "Commission").

B. The Commission shall be composed of one member from each party state and one federal member, if authorized by federal law, who shall be the Secretary of Transportation or his designee. Each state member shall be appointed, suspended, or removed and shall serve subject to and in accordance with the laws of the state which he represents.

C. The state members shall each be entitled to one vote on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of all members representing the party states are present, and unless a majority of the total number of votes on the Commission are cast in favor thereof. The federal member shall not be entitled to a vote on the Commission unless authorized by a majority vote of the state members. The state members may provide that decisions of the Commission shall require the affirmative vote of the federal member and of a majority of the state members, if such provision is necessary in order to meet the requirements of federal law. In matters coming before the Commission, the state members shall, to the extent practicable, consult with representatives of appropriate local subdivisions within their respective states and the federal member, if any, shall consult with the federal departments and agencies having an interest in the subject matter.

D. The state members of the Commission shall elect annually, from among their number, a chairman and a vice chairman. The state members may provide that the chairman so elected shall be designated as the state co-chairman and the federal member shall be designated as the federal co-chairman, if such provision is necessary in order to meet the requirements of federal law.

E. Each state member shall have an alternate appointed in accordance with the laws of the state which he represents. The federal member, if any, shall have an alternate appointed in accordance with federal law. An

alternate shall be entitled to vote in the event of the absence, death, disability, removal, or resignation of the state or federal member for whom he is an alternate.

Article III FUNCTIONS OF THE COMMISSION

A. It shall be the primary function of the Commission to authorize and effect a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West. To carry out this function, the Commission shall have power to:

- (1) Establish basic regional demonstration policy and coordinate with federal policy makers where appropriate;
- (2) Create a management plan and implement programs through a suitable staff;
- (3) Designate demonstration arenas and facilities;
- (4) Select demonstration operators;
- (5) Establish a funding plan for the demonstration programs selected; and
- (6) Establish means of monitoring and evaluating the demonstration programs.

Article IV ADMINISTRATIVE POWERS AND DUTIES OF THE COMMISSION

A. The Commission shall adopt bylaws, rules, and regulations for the conduct of its business and the performance of its functions, and shall have the power to amend and rescind such bylaws, rules, and regulations. The Commission shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

B. The Commission may accept, use, and dispose of gifts or donations of services or property, real, personal, or mixed, tangible or intangible, for any of its purposes and functions under this compact.

C. The Commission may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in carrying out its functions and on such terms as it may deem appropriate, with any department, agency, or instrumentality of the United States or with any state, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation.

D. In order to obtain information needed to carry out its duties, the Commission may hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable. The chairman of the Commission, or any member designated by the Commission for the purpose, shall have authority to administer oaths when it is determined by the Commission that testimony shall be taken or evidence received under oath.

E. The Commission may arrange for the head of any federal, state, or local department or agency to furnish to the Commission such information as may be available to or procurable by such department or agency, relating to the duties and functions of the Commission.

F. The Commission annually shall make to the Governor of each party state, a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been adopted by the Commission, which report shall be transmitted to the legislature of said state. The Commission may issue such additional reports as it may deem desirable.

Article V FINANCES

A. The members of the Commission shall serve without compensation from the Commission, but the compensation and expenses of each state member in attending Commission meetings may be paid by the state he represents in accordance with the laws of that state. All other expenses incurred by the Commission shall be paid by the Commission.

B. The Commission shall submit periodically to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof. Each such budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The share to be paid by each party state shall be determined by a majority vote of the state members of the Commission. The federal member, if any, shall not participate or vote in such determination. The costs shall be allocated equitably among the party states in accordance with their respective interests.

C. The Commission may meet any of its obligations in whole or in part with funds available to it from the federal government or other sources under Article IV(B) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV(B) of this compact, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

Article VI PERSONNEL

A. The Commission may appoint and fix the compensation of an Executive Director, who shall be responsible for the day-to-day management of the operations conducted by the Commission. The Executive Director shall act as secretary-treasurer for the Commission and he, together with such other personnel as the Commission may direct, shall be bonded in such amounts as the Commission may require.

B. The Executive Director shall, with the approval of the Commission, appoint and remove or discharge such technical, clerical or other personnel on a regular, part-time, or consulting basis as may be necessary for the performance of the Commission's functions.

C. Officers and employees of the Commission shall be eligible for social security coverage in respect to old age and survivors' insurance provided the Commission takes

such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford the officers and employees of the Commission terms and conditions of employment similar to those enjoyed by employees of the party states generally. The Commission shall not be bound by any statute or regulation of any party state in the employment or discharge of any officer or employee.

Article VII RECORDS AND AUDIT

A. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

B. The audit authorities of each of the party states and of the appropriate federal departments and agencies, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the Commission that are pertinent.

C. The Commission shall keep books and records in compliance with federal requirements and standards where necessary to qualify for federal assistance, including records which fully disclose the amount and disposition of the proceeds of federal assistance the Commission has received, the total cost of the plan, program, or project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the plan, program, or project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Article VIII ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

A. Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by 7 states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX CONSTRUCTION AND SEVERABILITY

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1972 ex.s. c 36 § 3.]

81.96.030 Service of secretary of transportation as state member, execution of compact. The secretary of transportation or his designee may serve as the Washington state member to the western regional short-haul air transportation compact and may execute the compact on behalf of this state with any other state or states legally joining therein. [1984 c 7 § 376; 1972 ex.s. c 36 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 81.98 CONSTRUCTION

Sections	
81.98.010	Continuation of existing law.
81.98.020	Title, chapter, section headings not part of law.
81.98.030	Invalidity of part of title not to affect remainder.
81.98.040	Repeals and saving.
81.98.050	Emergency—1961 c 14.

81.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 14 § 81.98.010.]

81.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 81.98.020.]

81.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 81.98.030.]

81.98.040 Repeals and saving. See 1961 c 14 § 81.98.040.

81.98.050 Emergency—1961 c 14. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 81.98.050.]

Title 82

EXCISE TAXES

Chapters

- 82.01** Department of revenue.
- 82.02** General provisions.
- 82.03** Board of tax appeals.
- 82.04** Business and occupation tax.
- 82.08** Retail sales tax.
- 82.12** Use tax.
- 82.14** Counties, cities and metropolitan municipal corporations—Retail sales and use taxes.
- 82.14A** Cities and towns—License fees and taxes on financial institutions.
- 82.14B** Counties—Tax on telephone access line use.
- 82.16** Public utility tax.
- 82.18** Refuse collection tax.
- 82.22** Hazardous substance tax.
- 82.24** Tax on cigarettes.
- 82.26** Tax on tobacco products.
- 82.27** Tax on enhanced food fish.
- 82.29A** Leasehold excise tax.
- 82.32** General administrative provisions.
- 82.34** Pollution control facilities—Tax exemptions and credits.
- 82.35** Cogeneration facilities—Tax credits.
- 82.36** Motor vehicle fuel tax.
- 82.37** Motor vehicle fuel importer tax act.
- 82.38** Special fuel tax act.
- 82.41** Multistate motor fuel tax agreement.
- 82.42** Aircraft fuel tax.
- 82.44** Motor vehicle excise tax.
- 82.45** Excise tax on real estate sales.
- 82.46** Counties and cities—Excise tax on real estate sales.
- 82.48** Aircraft excise tax.
- 82.49** Watercraft excise tax.
- 82.50** Mobile homes, travel trailers, and campers excise tax.
- 82.52** Extension of excises to federal areas.
- 82.56** Multistate tax compact.
- 82.60** Tax deferrals for investment projects in distressed areas.
- 82.61** Tax deferrals for manufacturing, research, and development projects.
- 82.62** Tax credits for eligible business projects.
- 82.98** Construction.

Additional taxes and provisions relating thereto, see titles pertaining to particular taxing authorities, i.e., counties, cities, school districts, public utility districts, etc.

Cigarette vending machine license fee: RCW 19.91.150.

Hotels, motels, etc., special excise tax on charges for furnishing lodging: RCW 67.28.180 and 67.40.090.

Tax advisory council: Chapter 43.38 RCW.

Termination of tax preferences: Chapter 43.136 RCW.

Chapter 82.01

DEPARTMENT OF REVENUE

Sections

- 82.01.050 Department established—Director of revenue.
- 82.01.060 Director—Powers and duties.
- 82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.
- 82.01.080 Director—Delegation of powers and duties—Responsibility.
- 82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission.
- 82.01.100 Assistance to other state agencies in administration and collection of taxes.
- 82.01.110 Tax exemption impact report.
- 82.01.115 Biennial listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor.
- 82.01.120 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts.
- 82.01.125 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.
- 82.01.130 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts—Alternative forecasts.
- 82.01.135 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.

Agencies to review licensure requirements and report to governor: RCW 19.02.120.

Apportionment factors (for school districts) to be based on current figures—Rules and regulations: RCW 28A.41.055.

Director as board of review member, business registration and licensing system: RCW 19.02.040.

Escheat of postal savings system accounts, director's duties: Chapter 63.48 RCW.

Gambling activities, reports to department of revenue: RCW 9.46.130.

Motor vehicle fund, distribution of amount to counties, department to furnish information: RCW 46.68.124.

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

Termination of tax preferences: Chapter 43.136 RCW.

82.01.050 Department established—Director of revenue. There is established a department of state government to be known as the department of revenue of the state of Washington, of which the chief executive officer shall be known as the director of revenue. [1967 ex.s. c 26 § 2.]

Effective date—1967 ex.s. c 26: "This act shall take effect July 1, 1967." [1967 ex.s. c 26 § 53.]

82.01.060 Director—Powers and duties. The director of revenue, hereinafter in *this 1967 amendatory act referred to as the director, through the department

of revenue, hereinafter in *this 1967 amendatory act referred to as the department, shall:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time *this 1967 amendatory act takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules and regulations as he may deem necessary or desirable to carry out the powers and duties imposed upon him or the department by the legislature: *Provided*, That rules and regulations adopted by the tax commission prior to the effective date of *this 1967 amendatory act shall remain in force until such time as they may be revised or rescinded by the director;

(3) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(4) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(5) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner. [1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

**Reviser's note:* "This 1967 amendatory act" [1967 ex.s. c 26] consists of chapters 82.01 and 82.03 RCW, RCW 11.08.005; amendments to RCW 19.91.010, 23.90.040, 43.17.010, 43.17.020, 54.28.010, 60.28.020, 60.28.050-60.28.070, 63.28.070, 82.02.010, 82.32.160-82.32.180, 83.01.010, 84.04.110, 84.12.350, 84.16.110; and the repeal of RCW 82.01.010-82.01.040.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services. The director shall have charge and general supervision of the department of revenue. He shall appoint an assistant director for administration, hereinafter in *this 1967 amendatory act referred to as the assistant director, and subject to the provisions of chapter 41.06 RCW may appoint and employ such clerical, technical and other personnel as may be necessary to carry out the powers and duties of the department. The director may also enter into personal service contracts with out-of-state individuals or business entities for the performance of auditing services outside the state of Washington when normal efforts to recruit classified employees are unsuccessful. The director may agree to pay to the department's employees or contractors who reside out of state

such amounts in addition to their ordinary rate of compensation as are necessary to defray the extra costs of facilities, living, and other costs reasonably related to the out-of-state services, subject to legislative appropriation for those purposes. The special allowances shall be in such amounts or at such rates as are approved by the office of financial management. This section does not apply to audit functions performed in states contiguous to the state of Washington. [1982 c 128 § 1; 1967 ex.s. c 26 § 4.]

**Reviser's note:* For "this 1967 amendatory act", see note following RCW 82.01.060.

Effective date—1982 c 128: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1982." [1982 c 128 § 2.]

82.01.080 Director—Delegation of powers and duties—Responsibility. The director may delegate any power or duty vested in or transferred to him by law, or executive order, to the assistant director or to any of the director's subordinates; but the director shall be responsible for the official acts of the officers and employees of the department. [1967 ex.s. c 26 § 5.]

82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission. Except for the powers and duties devolved upon the board of tax appeals by the provisions of RCW 82.03.010 through 82.03.190, the director of revenue shall, after July 1, 1967, exercise those powers, duties and functions theretofore vested in the tax commission of the state of Washington, including all powers, duties and functions of the commission acting as the commission or as the state board of equalization or in any other capacity. [1967 ex.s. c 26 § 6.]

82.01.100 Assistance to other state agencies in administration and collection of taxes. Assistance of the department of revenue in the administration or collection of those state taxes which are administered or collected by other state agencies may be requested by the agencies concerned. Such assistance may be given by the director to the extent that the limitations of time, personnel and the conduct of the duties of the department shall allow. The department shall be reimbursed by any agency to which assistance is rendered. [1967 ex.s. c 26 § 11.]

82.01.110 Tax exemption impact report. Prior to the start of the regular session each year, the director shall submit a tax exemption impact report to the legislature estimating the revenue foregone as a result of the exemptions under RCW 82.04.325, 84.36.490, and 82.29A.135. [1980 c 157 § 4.]

Analysis of desirability of existing tax exemptions by tax advisory council: RCW 43.38.020.

Review and termination of tax preferences: Chapter 43.136 RCW.

82.01.115 Biennial listing of reduction in revenues from tax exemptions to be submitted to legislature by

department of revenue—Periodic review and submission of recommendations to legislature by governor. See RCW 43.06.400.

82.01.120 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts. (1) The director shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts. As used in this section and RCW 82.01.125 and 82.01.130, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the economic and revenue forecast council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years, unless the supervisor is reappointed by the director and approved by the economic and revenue forecast council for another three years. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(2) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.01.130(2):

(a) An official state economic and revenue forecast;

(b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and

(c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(3) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.01.130(3), to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives and the chair of the legislative transportation committee, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037. [1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1.]

Reviser's note: This section was amended by 1987 c 502 § 10 and by 1987 c 505 § 79, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

82.01.125 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee. The administrator of the legislative evaluation and accountability program committee may request, and the supervisor shall provide, alternative economic and revenue forecasts based on assumptions specified by the administrator. [1984 c 138 § 3.]

Legislative evaluation and accountability program committee: Chapter 44.48 RCW.

82.01.130 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts—Alternative forecasts. (1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.01.120. If the council is unable to approve a forecast before a date required in RCW 82.01.120, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(3) A council member who does not cast an affirmative vote for approval of the official economic and revenue forecast may request, and the supervisor shall provide, an alternative economic and revenue forecast based on assumptions specified by the member.

(4) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 138 § 4.]

82.01.135 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings. (1) To promote the free flow of information and to promote legislative input in the preparation of forecasts, immediate access to all information relating to economic and revenue forecasts shall be available to the economic and revenue forecast work group, hereby created. Revenue collection information shall be available to the economic and revenue forecast work group the first business day following the conclusion of each collection period. The economic and revenue forecast work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

(a) Department of revenue;

(b) Office of financial management;

(c) Legislative evaluation and accountability program committee;

(d) Ways and means committee of the senate; and

(e) Ways and means committee of the house of representatives.

(2) The economic and revenue forecast work group shall provide technical support to the economic and revenue forecast council. Meetings of the economic and revenue forecast work group may be called by any member of the group for the purpose of assisting the

economic and revenue forecast council, reviewing the state economic and revenue forecasts, or reviewing monthly revenue collection data or for any other purpose which may assist the economic and revenue forecast council. [1986 c 158 § 23; 1984 c 138 § 5.]

Chapter 82.02 GENERAL PROVISIONS

Sections

82.02.010	Definitions.
82.02.020	State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
82.02.030	Additional tax rates.
82.02.040	Authority of operating agencies to levy taxes.

82.02.010 Definitions. For the purpose of this title, unless otherwise required by the context:

(1) "Department" means the department of revenue of the state of Washington;

(2) The word "director" means the director of the department of revenue of the state of Washington;

(3) The word "taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title;

(4) Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include all other genders. [1979 c 107 § 9; 1967 ex.s. c 26 § 14; 1961 c 15 § 82.02.010. Prior: 1935 c 180 § 3; RRS § 8370-3.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. Except only as expressly provided in RCW 67.28.180 and 67.28.190 and the provisions of chapter 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. No county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements pursuant to RCW 58.17.110 within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result

of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat: *Provided*, That any such voluntary agreement shall be subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of the refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: *Provided*, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: *Provided further*, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the authority conferred by these titles affected. [1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c

227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Severability—1970 ex.s. c 94: See RCW 82.14.900.

82.02.030 Additional tax rates. (1) The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 66.24.290(2), 82.04.2901, 82.16.020(2), 82.26.020(2), 82.27.020(5), 82.29A.030(2), and 82.44.020(6) shall be seven percent; and

(2) The rate of the additional taxes under RCW 82.08.150(4) shall be fourteen percent. [1987 1st ex.s. c 9 § 6; 1987 c 472 § 15; 1987 c 80 § 4; 1986 c 296 § 5; 1985 c 471 § 9; 1983 2nd ex.s. c 3 § 6; 1983 c 7 § 8; 1982 2nd ex.s. c 14 § 1; 1982 1st ex.s. c 35 § 31.]

Reviser's note: This section was amended by 1987 c 80 § 4, by 1987 c 472 § 15, and by 1987 1st ex.s. c 9 § 6, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—1987 c 472: See RCW 79.71.900.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Effective date—Applicability—1982 2nd ex.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

The tax rates imposed under this act are effective on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 2nd ex.s. c 14 § 3.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.02.040 Authority of operating agencies to levy taxes. Nothing in this title may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 55.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Chapter 82.03

BOARD OF TAX APPEALS

Sections

82.03.010	Board created.
82.03.020	Members—Number—Qualifications—Appointment.
82.03.030	Terms—Vacancies.
82.03.040	Removal of members—Grounds—Procedure.

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82.03.050	Operation on part time or full time basis—Salary—Compensation—Travel expenses.
82.03.060	Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board.
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82.03.080	Chairman.
82.03.090	Office of board—Quorum—Hearings.
82.03.100	Findings and decisions—Signing—Filing—Public inspection.
82.03.110	Publication of findings and decisions.
82.03.120	Journal of official actions.
82.03.130	Appeals to board—Jurisdiction as to types of appeals.
82.03.140	Appeals to board—Election of formal or informal hearing.
82.03.150	Appeals to board—Informal hearings, powers of board—Assistance.
82.03.160	Appeals to board—Formal hearings, powers of board—Assistance.
82.03.170	Rules of practice and procedure.
82.03.180	Judicial review of board's decisions.
82.03.190	Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure.

Limitation on increase in property value in appeals to board of tax appeals from county board of equalization: RCW 84.08.060.

Review of sale price established for certain shorelands: RCW 79.94.210.

82.03.010 Board created. There is hereby created the board of tax appeals of the state of Washington as an agency of state government. [1967 ex.s. c 26 § 30.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.03.020 Members—Number—Qualifications—Appointment. The board of tax appeals, hereinafter in *this 1967 amendatory act referred to as the board, shall consist of three members qualified by experience and training in the field of state and local taxation, appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their terms shall be members of the same political party. [1967 ex.s. c 26 § 31.]

***Reviser's note:** For "this 1967 amendatory act", see note following RCW 82.01.060.

82.03.030 Terms—Vacancies. Members of the board shall be appointed for a term of six years and until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs: *Provided*, That the terms of the first three members of the board shall be staggered so that one member shall be appointed to serve until March 1, 1969, one member until March 1, 1971, and one member until March 1, 1973. [1967 ex.s. c 26 § 32.]

82.03.040 Removal of members—Grounds—Procedure. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and

adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment. [1967 ex.s. c 26 § 33.]

82.03.050 Operation on part time or full time basis—Salary—Compensation—Travel expenses. The board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the board shall operate on a full time basis, each member of the board shall receive an annual salary to be determined by the governor. If it is determined that the board shall operate on a part time basis, each member of the board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties, but such compensation shall not exceed ten thousand dollars in a fiscal year. Each board member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 176; 1970 ex.s. c 65 § 2; 1967 ex.s. c 26 § 34.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1970 ex.s. c 65: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 65 § 11.]

Effective date—1970 ex.s. c 65: "This 1970 amendatory act shall take effect July 1, 1970." [1970 ex.s. c 65 § 12.]

82.03.060 Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board. Each member of the board of tax appeals:

(1) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member of the board, nor shall he serve on or under any committee of any political party; and

(2) Shall not for a period of one year after the termination of his membership on the board, act in a representative capacity before the board on any matter. [1967 ex.s. c 26 § 35.]

82.03.070 Executive secretary, clerk, assistants. The board may appoint, discharge and fix the compensation of an executive secretary, a clerk, and such other clerical, professional and technical assistants as may be necessary. [1967 ex.s. c 26 § 36.]

82.03.080 Chairman. The board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect such a chairman. [1967 ex.s. c 26 § 37.]

82.03.090 Office of board—Quorum—Hearings. The principal office of the board shall be at the state

capital, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1967 ex.s. c 26 § 38.]

82.03.100 Findings and decisions—Signing—Filing—Public inspection. The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open to public inspection at all reasonable times. [1967 ex.s. c 26 § 39.]

82.03.110 Publication of findings and decisions. The board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof. [1967 ex.s. c 26 § 40.]

82.03.120 Journal of official actions. The board shall maintain at its principal office a journal which shall contain all official actions of the board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the board at all reasonable times. [1967 ex.s. c 26 § 41.]

82.03.130 Appeals to board—Jurisdiction as to types of appeals. The board shall have jurisdiction to decide the following types of appeals:

(1) Appeals taken pursuant to RCW 82.03.190.

(2) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(3) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, the right to such an appeal being hereby established.

(4) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 RCW and 84.16 RCW, the right to such appeal being hereby established.

(5) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: *Provided*, That

(a) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after

the date of certification as required by RCW 84.48.075; and

(b) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character. [1982 1st ex.s. c 46 § 6; 1977 ex.s. c 284 § 2; 1967 ex.s. c 26 § 42.]

Purpose—Intent—1977 ex.s. c 284: See note following RCW 84.48.075.

82.03.140 Appeals to board—Election of formal or informal hearing. In all appeals over which the board has jurisdiction under RCW 82.03.130, a party taking an appeal may elect either a formal or an informal hearing, such election to be made according to rules of practice and procedure to be promulgated by the board: *Provided, however,* That nothing herein shall be construed to modify the provisions of RCW 82.03.190: *And provided further,* That upon an appeal under RCW 82.03.130(5), the director of revenue may, within ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.04 RCW. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted. [1982 1st ex.s. c 46 § 8; 1967 ex.s. c 26 § 43.]

82.03.150 Appeals to board—Informal hearings, powers of board—Assistance. In all appeals involving an informal hearing, the board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.04 RCW. The board shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(2) the board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board or any member thereof may deem necessary or appropriate. [1967 ex.s. c 26 § 44.]

82.03.160 Appeals to board—Formal hearings, powers of board—Assistance. In all appeals involving a formal hearing the board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.04 RCW; and the board, and each member thereof, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter 34.04 RCW relating to contested cases. The board shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(2), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: *Provided, however,* That any communication, oral or written, from the staff of the director to

the board shall be presented only in open hearing. [1967 ex.s. c 26 § 45.]

82.03.170 Rules of practice and procedure. All proceedings, including both formal and informal hearings, before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board shall publish such rules and arrange for the reasonable distribution thereof. [1967 ex.s. c 26 § 46.]

82.03.180 Judicial review of board's decisions. Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140: *Provided, however,* That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: *And provided further,* That no review from a decision made pursuant to RCW 82.03.130(1) may be obtained by a taxpayer unless within the petition period provided by RCW 34.04.130 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130(5) shall have the right of review from a decision made pursuant to RCW 82.03.130(5). [1982 1st ex.s. c 46 § 9; 1967 ex.s. c 26 § 47.]

82.03.190 Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure. Any person having received notice of a denial of a petition or a notice of determination made under RCW 82.32.160 or 82.32.170 may appeal, within thirty days from the date of the notice of such denial or determination, to the board of tax appeals. In the notice of appeal the taxpayer shall set forth the amount of the tax which he contends should be reduced or refunded and the reasons for such reduction or refund, in accordance with rules of practice and procedure prescribed by the board. The appeal shall be perfected by serving a copy of the notice of appeal upon the department of revenue within the time specified herein and by filing the original thereof with proof of service with the clerk of the board: *Provided, however,* That if the notice of appeal relates to an application made to the department of revenue under chapter 82.34 RCW, the taxpayer shall set forth the amount to which the taxpayer claims the credit or exemption should apply, and the grounds for such contention, in accordance with rules of practice and procedure prescribed by the board. If the taxpayer intends that the hearing before the board be held pursuant to the administrative procedure act (chapter 34.04 RCW), the notice of appeal shall also so state. In the event that the notice of appeal does not so state, the department may, within

ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to the administrative procedure act. [1983 c 3 § 211; 1979 ex.s. c 209 § 50; 1975 1st ex.s. c 158 § 3; 1967 ex.s. c 26 § 48.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

Effective date—1975 1st ex.s. c 158: See note following RCW 82.34.050.

Review of disputes as to appraised value of watercraft: RCW 82.49.060.

Chapter 82.04

BUSINESS AND OCCUPATION TAX

Sections

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- 82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.
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- 82.04.4322 Deductions—Artistic or cultural organization—Compensation from United States, state, etc., for artistic or cultural exhibitions, performances, or programs.
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- 82.04.4328 "Artistic or cultural organization" defined.
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- 82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce—Construction.
- 82.04.435 Credits for certain manufacturers.
- 82.04.440 Persons taxable on multiple activities—Credits.
- 82.04.444 Credit for property taxes paid on business inventories—Verification of payment—Penalty.
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- 82.04.450 Value of products, how determined.
- 82.04.460 Business within and without state—Apportionment.
- 82.04.470 Resale certificate—Burden of proof.
- 82.04.480 Sales in own name—Sales as agent.
- 82.04.500 Tax part of operating overhead.
- 82.04.510 General administrative provisions invoked.
- 82.04.600 Chapter not to apply to certain materials printed in county, city, town, school district, educational service district, library or library district.
- 82.04.900 Construction—1961 c 15.

Admission tax
cities: RCW 35.21.280.
counties: Chapter 36.38 RCW.

Business and occupation tax credits for cogeneration facilities: Chapter 82.35 RCW.

Public utility districts, privilege taxes: Chapter 54.28 RCW.

82.04.010 Introductory. For the purposes of this chapter, unless otherwise required by the context, the terms used herein shall have the meaning given to them in RCW 82.04.020 through 82.04.212. [1961 c 15 § 82.04.010. Prior: 1955 c 389 § 2; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370–5, part.]

82.04.020 "Tax year", "taxable year". "Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the department of revenue to use a fiscal year in lieu of

the calendar year. [1975 1st ex.s. c 278 § 39; 1961 c 15 § 82.04.020. Prior: 1955 c 389 § 3; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5; Rem. Supp. 1949 § 8370–5, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.030 "Person", "company". "Person" or "company", herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. [1963 ex.s. c 28 § 1; 1961 c 15 § 82.04.030. Prior: 1955 c 389 § 4; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370–5, part.]

Effective date—1963 ex.s. c 28: "This act shall take effect on July 1, 1963." [1963 ex.s. c 28 § 17.] This applies to RCW 82.04.030, 82.04.290, 82.08.030, 82.12.030, 82.26.120, 82.32.080, 82.32.090, 82.32.160, 82.32.180, 82.32.235, 82.32.330, 83.40.040, and 84.36.171–84.36.174.

82.04.035 "Plantation Christmas trees". "Plantation Christmas trees" means Christmas trees which are exempt from the timber excise tax under RCW 84.33.170. [1987 c 23 § 1.]

82.04.040 "Sale", "casual or isolated sale". "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved. [1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370–5, part.]

82.04.050 "Sale at retail", "retail sale". (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal

property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person, or (c) purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale, or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon, or (e) purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) above following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house, trailer camp or tourist camp for the exclusive use of the tenants thereof, and also excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects; (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture; (c) the charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner

who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner; (d) the sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting; (e) the sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (f) the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same; (g) the sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) above when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this paragraph shall be construed to modify the first paragraph of this section and nothing contained in the first paragraph of this section shall be construed to modify this paragraph.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) automobile parking and storage garage businesses.

(4) The term shall also include the renting or leasing of tangible personal property to consumers.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the

building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind, nor shall it include sales of feed, seed, seedlings, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including plantation Christmas trees and milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects but only when such production and subsequent sale are exempt from tax under RCW 82.04.330, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. [1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1. Prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 1987 c 23 § 2 and by 1987 c 285 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: *Provided*, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: *Provided further*, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: *And provided further*, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978."

[1975 1st ex.s. c 291 § 46.] Sections not specified took effect July 2, 1975.

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

82.04.060 "Sale at wholesale", "wholesale sale". "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, or any sale of telephone service as defined in RCW 82.04.065, which is not a sale at retail and means any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: *Provided*, That the term "real or personal property" as used in this section shall not include any natural products named in RCW 82.04.100. [1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.04.062 "Sale at wholesale", "sale at retail" excludes sale of precious metal bullion and monetized bullion—Computation of tax. (1) For purposes of this chapter, "wholesale sale," "sale at wholesale," "retail

sale," and "sale at retail" do not include the sale of precious metal bullion or monetized bullion.

(2) In computing tax under this chapter on the business of making sales of precious metal bullion or monetized bullion, the tax shall be imposed on the amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, but no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

(3) For purposes of this section, "precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art. [1985 c 471 § 5.]

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

82.04.065 "Competitive telephone service", "network telephone service", "telephone service", "telephone business". (1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Network telephone service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

(3) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in subsections (1) and (2) of this section.

(4) "Telephone business" means the business of providing network telephone service, as defined in subsection (2) of this section. It includes cooperative or farmer line telephone companies or associations operating an exchange. [1983 2nd ex.s. c 3 § 24.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.04.070 "Gross proceeds of sales". "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [1961 c 15 § 82.04.070. Prior: 1955 c 389 § 8; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.080 "Gross income of the business". "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [1961 c 15 § 82.04.080. Prior: 1955 c 389 § 9; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.090 "Value proceeding or accruing". "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The department of revenue may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due. [1975 1st ex.s. c 278 § 40; 1961 c 15 § 82.04.090. Prior: 1955 c 389 § 10; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.100 "Extractor". "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product,

or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession; or persons who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession. [1987 c 23 § 3; 1985 c 148 § 2; 1965 ex.s. c 173 § 2; 1961 c 15 § 82.04.100. Prior: 1955 c 389 § 11; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

Withdrawal of gas from underground reservoir not deemed taking or producing under RCW 82.04.100: RCW 80.40.010.

82.04.110 "Manufacturer". "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability: *Provided*, That a nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state: *Provided further*, That the owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly. [1971 ex.s. c 186 § 1; 1961 c 15 § 82.04.110. Prior: 1955 c 389 § 12; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective date—1971 ex.s. c 186: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 186 § 5.]

82.04.120 "To manufacture". "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles.

"To manufacture" shall not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen or canned outside this state. [1987 c 493

§ 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120. Prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

Effective dates—**Severability**—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

82.04.130 "Commercial or industrial use". "Commercial or industrial use" means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities. [1967 ex.s. c 149 § 5; 1961 c 15 § 82.04.130. Prior: 1955 c 389 § 14; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.140 "Business". "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. [1961 c 15 § 82.04.140. Prior: 1955 c 389 § 15; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.150 "Engaging in business". "Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. [1961 c 15 § 82.04.150. Prior: 1955 c 389 § 16; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.160 "Cash discount". "Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date. [1961 c 15 § 82.04.160. Prior: 1955 c 389 § 17; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.170 "Tuition fee". "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state, or defined as a degree granting institution under *RCW 28B.05.030(10) and accredited by an accrediting

association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions. [1985 c 135 § 1; 1961 c 15 § 82.04.170. Prior: 1955 c 389 § 18; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

*Reviser's note: RCW 28B.05.030 was repealed by 1986 c 299 § 26, effective July 1, 1986. For regulation of degree-granting institutions, see chapter 28B.85 RCW.

82.04.180 "Successor". "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor. [1985 c 414 § 6; 1961 c 15 § 82.04.180. Prior: 1955 c 389 § 19; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.190 "Consumer". "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2) Any person engaged in any business activity taxable under RCW 82.04.290 and any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person. [1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967

ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190. Prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

82.04.200 "In this state", "within this state". "In this state" or "within this state" includes all federal areas lying within the exterior boundaries of the state. [1961 c 15 § 82.04.200. Prior: 1955 c 389 § 21; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.210 "Byproduct". "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities. [1961 c 15 § 82.04.210. Prior: 1955 c 389 § 22; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

82.04.212 "Retail store or outlet". "Retail store or outlet" does not mean a device or apparatus through which sales are activated by coin deposits but the phrase shall include automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus. [1961 c 15 § 82.04.212. Prior: 1959 c 232 § 1.]

82.04.220 Business and occupation tax imposed. There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be. [1961 c 15 § 82.04.220. Prior: 1955 c 389 § 42; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

82.04.230 Tax upon extractors. Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products,

including byproducts, extracted for sale or for commercial or industrial use, multiplied by the rate of forty-four one-hundredths of one percent;

The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state. [1971 ex.s. c 281 § 2; 1969 ex.s. c 262 § 33; 1967 ex.s. c 149 § 7; 1961 c 15 § 82.04.230. Prior: 1955 c 389 § 43; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

82.04.240 Tax on manufacturers. Upon every person except persons taxable under subsections (2), (3), (4), (5), (7), (8), or (9) of RCW 82.04.260 engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of forty-four one-hundredths of one percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective dates—1981 c 172: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.] This applies to the 1981 c 172 amendments to RCW 82.04.240, 82.04.250, 82.04.260, 82.04.270, 82.04.440, 82.24.020, 82.32.045, and 82.32.090; the 1981 c 172 amendment to 1981 c 7 § 5; the repeal of RCW 82.04.275; and to the enactment of RCW 82.04.265. "Section 9 of this act" is a footnote to RCW 82.32.045; "sections 7 and 8 of this act" are the 1981 c 172 amendments to RCW 82.32.045 and 82.32.090, respectively; and "section 10 of this act" is the enactment of RCW 82.04.265.

Effective date—1979 ex.s. c 196: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

82.04.250 Tax on retailers. Upon every person except persons taxable under RCW 82.04.260(8) engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of forty-four one-hundredths of one percent. [1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250. Prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.255 Tax on real estate brokers. Upon every person engaging within the state as a real estate broker; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.50 percent.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: *Provided, however,* That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission: *And provided further,* That where the brokerage office has paid the tax as provided herein, salesmen or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction. [1985 c 32 § 2; 1983 2nd ex.s. c 3 § 1; 1983 c 9 § 1; 1970 ex.s. c 65 § 3.]

Construction—1983 2nd ex.s. c 3: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1983 2nd ex.s. c 3 § 65.]

Severability—1983 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 2nd ex.s. c 3 § 66.]

Effective dates—1983 2nd ex.s. c 3: "(1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1983, except that:

(a) Sections 42 through 50, and 52, 53, 65, and 66 of this act shall take effect June 30, 1983;

(b) Sections 1 through 4 of this act shall take effect July 1, 1983, except as provided in subsection (2) of this section;

(c) Sections 21, 22, and 51 of this act shall take effect January 1, 1984. Section 51 of this act shall be effective for property taxes levied in 1983 and due in 1984, and thereafter; and

(d) Section 63 of this act shall take effect April 1, 1985, and shall be effective in respect to taxable activities occurring on and after April 1, 1985; and

(e) The extension under this act of the retail sales tax to certain sales of telephone service shall apply to telephone service billed on or after July 1, 1983, whether or not such service was rendered before that date.

(f) Sections 61 and 62 of this act shall take effect on the day either of the following events occurs, whichever is earlier:

(i) A temporary or permanent injunction or order becomes effective which prohibits in whole or in part the collection of taxes at the rates specified in section 6, chapter 7, Laws of 1983; or

(ii) A decision of a court in this state invalidating in whole or in part section 6, chapter 7, Laws of 1983, becomes final.

(2) The legislature finds that the amendments contained in sections 1 through 4 of this act constitute an integrated and inseparable entity and if any one or more of those sections does not become law, the remaining sections shall not take effect. If sections 1 through 4 of this act do not become law, the governor shall in that event reduce approved allotments under RCW 43.88.110 for the 1983-85 biennium by four percent." [1983 2nd ex.s. c 3 § 67.]

Reviser's note: (1) "Sections 42 through 50 and 52" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.49.010, 88.02.020, 88.02.030, 88.02.050, and 88.02.110 and the enactment of RCW 43.51.400,

82.49.020, 82.49.070, 88.02.070, and 88.02.080. "Section 53" consists of the enactment of a new section which appears as a footnote to RCW 88.02.020, and "sections 65 and 66" consist of the enactment of new sections which appear as footnotes to RCW 82.04.255 above.

(2) "Sections 1 through 4" consist of the 1983 2nd ex.s. c 3 §§ 1-4 amendments to RCW 82.04.255, 82.04.290, 82.04.2904, and 82.04.2901, respectively.

(3) "Sections 21, 22, and 51" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.48.010, 82.48.030, and 84.36.080, respectively.

(4) "Section 63" consists of the 1983 2nd ex.s. c 3 amendment to RCW 82.32.045.

(5) "Sections 61 and 62" consist of the 1983 2nd ex.s. c 3 §§ 61 and 62 amendments to RCW 82.04.2901 and 82.08.020, respectively. For the effective date of sections 61 and 62, see *Bond v. Burrows*, 103 Wn.2d 153 (1984).

Construction—1983 c 9: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted nor any proceeding instituted under those sections." [1983 c 9 § 6.]

Severability—1983 c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 9 § 7.]

Effective date—1983 c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1983. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 9 § 8.]

Effective date—**Severability**—1970 ex.s. c 65: See notes following RCW 82.03.050.

82.04.260 Tax on buyer and wholesaler of wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye, and barley—Flour, pearl barley, and oil manufacturers—Seafood products manufacturers—Fruit and vegetable processors—Research and development organizations—Perishable meat products processors and wholesalers—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors. (1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, or oil manufactured, multiplied by the rate of one-eighth of one percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of one-quarter of one percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which

remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-eighth of one percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of three-tenths of one percent.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of forty-four one-hundredths of one percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of twenty-five one-hundredths of one percent through June 30, 1986, and one-eighth of one percent thereafter.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of twenty-five one-hundredths of one percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of twenty-five one-hundredths of one percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of twenty-five one-hundredths of one percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of thirty-three one-hundredths of one percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business

shall be equal to the gross proceeds derived from such activities multiplied by the rate of thirty-three one hundredths of one percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of thirty percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of one percent. [1987 c 139 § 1. Prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Severability—1985 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

Effective date—1985 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.270 Tax on wholesalers, distributors. (1) Upon every person except persons taxable under subsections (1) or (8) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of forty-four one-hundredths of one percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales: *Provided*, That the tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying forty-four one-hundredths of one percent of the value of the article so distributed as of the time of such distribution: *Provided*, That persons engaged in the activities described in this subsection shall not be liable for the tax imposed if by proper invoice it can be shown that they have purchased such property from a wholesaler who has paid a business and occupation tax to the state upon the same articles. This proviso shall not apply to purchases from manufacturers as defined in RCW 82.04.110. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality

and character, and in similar quantities by other taxpayers: *Provided further*, That delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets. [1981 c 172 § 4; 1971 ex.s. c 281 § 6; 1971 ex.s. c 186 § 4; 1969 ex.s. c 262 § 37; 1967 ex.s. c 149 § 11; 1961 c 15 § 82.04.270. Prior: 1959 ex.s. c 5 § 3; 1955 c 389 § 47; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, consumer as defined in RCW 82.04.190(6)—Cold storage warehouse defined—Storage warehouse defined. Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6), as now or hereafter amended; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of forty-four one hundredths of one percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. [1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—1986 c 226: See note following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.04.290 Tax on other business or service activities. Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.50 percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section. [1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290. Prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective date—1983 c 9: See notes following RCW 82.04.255.

82.04.2901 Additional tax imposed. There is levied and shall be collected from every person, other than persons taxed under RCW 82.04.2904, for the act or privilege of engaging in business activities, as a part of the tax imposed by the provisions of RCW 82.04.250, an additional tax equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under the provisions of RCW 82.04.250.

To facilitate collection of this additional tax, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth. [1985 c 32 § 4. Prior: 1983 2nd ex.s. c 3 § 61; 1983 2nd ex.s. c 3 § 4; 1983 c 9 § 4; 1982 1st ex.s. c 35 § 2; 1977 ex.s. c 324 § 1; 1975-'76 2nd ex.s. c 130 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective date—1983 c 9: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

82.04.2904 Additional tax imposed. (1) There is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed under RCW 82.04.220 through 82.04.240, inclusive, and RCW 82.04.260 through 82.04.280, inclusive, an additional tax equal to ten percent multiplied by the tax payable under RCW 82.04.220 through 82.04.240, inclusive, and RCW 82.04.260 through 82.04.280, inclusive.

(2) There is also levied and shall be collected from every person for the act or privilege of engaging in the business activity of making sales at retail which are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as a part of the tax imposed under RCW 82.04.250, an additional tax equal to ten percent multiplied by the tax payable on those activities under RCW 82.04.250.

(3) To facilitate collection of these additional taxes, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth. [1985 c 32 § 5; 1983 2nd ex.s. c 3 § 3; 1983 c 9 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective date—1983 c 9: See notes following RCW 82.04.255.

82.04.300 Exemptions—Based on monthly gross or yearly gross. This chapter shall apply to any person engaging in any business activity taxable under RCW 82.04.230, 82.04.240, 82.04.250, 82.04.260, 82.04.270, 82.04.280 and 82.04.290 other than those whose value of products, gross proceeds of sales, or gross income of the business is less than one thousand dollars per month: *Provided*, That where one person engages in more than one business activity and the combined measures of the tax applicable to such businesses equal or exceed one thousand dollars per month, no exemption or deduction from the amount of tax is allowed by this section.

Any person claiming exemption under the provisions of this section may be required to file returns even though no tax may be due: *Provided, further*, That the department of revenue may allow exemptions, by general rule or regulation, in those instances in which quarterly, semiannual, or annual returns are permitted. Exemptions for such periods shall be equivalent in amount to the total of exemptions for each month of a reporting period. [1983 c 3 § 213; 1979 ex.s. c 196 § 4; 1975 1st ex.s. c 278 § 41; 1961 c 293 § 3; 1961 c 15 § 82.04.300. Prior: 1959 ex.s. c 5 § 7; 1959 c 197 § 14; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.310 Exemptions—**Public utilities**. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82-.16 RCW. [1961 c 15 § 82.04.310. Prior: 1959 c 197 § 15; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.315 Exemptions—**International banking facilities**. This chapter shall not apply to the gross receipts of an international banking facility.

As used in this section, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve

System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D). [1982 c 95 § 7.]

Effective date—1982 c 95: See note following RCW 30.42.070.

82.04.320 Exemptions—**Insurance business**. This chapter shall not apply to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state: *Provided*, That the provisions of this section shall not exempt any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies: *Provided further*, That the provisions of this section shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor. [1961 c 15 § 82.04.320. Prior: 1959 c 197 § 16; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.325 Exemptions—**Alcohol manufactured for gasohol**—**Gasohol for motor vehicle fuel**—**Expiration of section**. The tax imposed by RCW 82.04.270(1) does not apply to any person who manufactures alcohol with respect to sales of said alcohol to be used in the production of gasohol for use as motor vehicle fuel, nor with respect to sales of gasohol for use as motor vehicle fuel. As used in this section, "motor vehicle fuel" has the meaning given in RCW 82.36.010(2), and "gasohol" means motor vehicle fuel which contains more than nine and one-half percent alcohol by volume. This RCW section shall expire December 31, 1992. [1985 c 371 § 2; 1980 c 157 § 3; 1979 ex.s. c 196 § 13.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.327 Exemptions—**Adult family homes**. This chapter does not apply to adult family homes which are licensed as such, or which are specifically exempt from licensing, under rules of the department of social and health services. [1987 1st ex.s. c 4 § 1.]

82.04.330 Exemptions—**Agriculture**. This chapter shall not apply to any person in respect to the business of growing or producing for sale upon the person's own lands or upon land in which the person has a present right of possession, any agricultural or horticultural produce or crop, or of raising upon the person's own lands or upon land in which the person has a present right of possession, any plantation Christmas tree or any animal, bird, fish, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, or in respect to the sale of such products at wholesale by such grower, producer, or raiser thereof. This exemption shall not apply to any person selling such products at retail or using such products as ingredients in a manufacturing process; nor to the sale of any animal or substance obtained therefrom by a person in connection

with the person's business of operating a stockyard or a slaughter or packing house; nor to any person in respect to the business of taking, cultivating, or raising timber; nor to any association of persons whatever, whether mutual, cooperative or otherwise, engaging in any business activity with respect to which tax liability is imposed under the provisions of this chapter. As used in this section, "fish" means fish which are cultivated or raised entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1987 c 23 § 4. Prior: 1985 c 414 § 10; 1985 c 148 § 1; 1965 ex.s. c 173 § 7; 1961 c 15 § 82.04.330; prior: 1959 c 197 § 17; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

Deductions—*Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330*—*Materials and supplies used: RCW 82.04.4287.*

82.04.335 Exemptions—**Agricultural fairs.** This chapter shall not apply to any business of any bona fide agricultural fair, if no part of the net earnings therefrom inures to the benefit of any stockholder or member of the association conducting the same: *Provided*, That any amount paid for admission to any exhibit, grandstand, entertainment, or other feature conducted within the fair grounds by others shall be taxable under the provisions of this chapter, except as otherwise provided by law. [1965 ex.s. c 145 § 1.]

82.04.337 Exemptions—**Amounts received by hop growers or dealers for processed hops shipped outside the state.** This chapter shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. This section does not exempt a processor or warehouse from taxation under this chapter on amounts charged for processing or warehousing. [1987 c 495 § 1.]

82.04.340 Exemptions—**Athletic exhibitions.** This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the *state athletic commission. [1961 c 15 § 82.04.340. Prior: 1959 c 197 § 18; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

***Reviser's note:** The "state athletic commission" redesignated "state boxing commission" by 1981 c 337 § 1. See RCW 67.08.001.

82.04.350 Exemptions—**Racing.** This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the horse racing commission. [1961 c 15 § 82.04.350. Prior: 1959 c 197 § 19; prior:

1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.355 Exemptions—**Ride sharing.** This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for the elderly and the handicapped in accordance with RCW 46.74-.010. [1979 c 111 § 17.]

Severability—1979 c 111: See note following RCW 46.74.010.

82.04.360 Exemptions—**Employees.** This chapter shall not apply to any person in respect to his employment in the capacity of an employee or servant as distinguished from that of an independent contractor. [1961 c 15 § 82.04.360. Prior: 1959 c 197 § 20; prior: 1945 c 249, § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.365 Exemptions—**Bazaar or rummage sales by nonprofit organization.** (1) This chapter does not apply to amounts derived by a nonprofit organization as a result of conducting or participating in a bazaar or rummage sale if:

(a) The organization does not conduct or participate in more than two bazaars or rummage sales per year; and

(b) Each bazaar or rummage sale does not extend over a period of more than two days; and

(c) The gross income received by each organization from each bazaar or rummage sale does not exceed one thousand dollars.

(2) For purposes of this section, "nonprofit organization" means an organization that meets all of the following criteria:

(a) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(b) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(c) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office. [1979 ex.s. c 196 § 7.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.367 Exemptions—**Nonprofit organizations that issue debt for student loans or that are guarantee agencies.** This chapter does not apply to gross income received by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans. [1987 c 433 § 1.]

82.04.370 Exemptions—Certain fraternal and beneficiary organizations. This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. Exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations. [1961 c 293 § 4; 1961 c 15 § 82.04.370. Prior: 1959 c 197 § 21; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.380 Exemptions—Certain corporations furnishing aid and relief. This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1961 c 15 § 82.04.380. Prior: 1959 c 197 § 22; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.385 Exemptions—Operation of sheltered workshops. This chapter shall not apply to income received from the department of social and health services for the cost of care, maintenance, support, and training of mentally retarded persons at nonprofit group training homes as defined by RCW 72.33.800(2) or to the gross sales or gross income received by nonprofit organizations from the operation of "sheltered workshops". For the purposes of this section, "sheltered workshops" means rehabilitation facilities, or that part of rehabilitation facilities, where any manufacture or handiwork is carried on and which is operated for the primary purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for handicapped individuals. [1972 ex.s. c 134 § 1; 1970 ex.s. c 81 § 3.]

82.04.390 Exemptions—Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This however, shall not be construed to allow a deduction of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest

or similar financial charges resulting from, or relating to, real estate transactions. [1961 c 15 § 82.04.390. Prior: 1959 ex.s. c 5 § 8; 1959 c 197 § 23; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.395 Exemptions—Certain materials printed in school district and educational service district printing facilities. This chapter shall not apply to school districts and educational service districts as defined in Title 28A RCW, in respect to materials printed in the school district and educational service districts printing facilities when said materials are used solely for school district and educational service district purposes. [1979 ex.s. c 196 § 12.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.397 Exemptions—Certain materials printed in county, city, or town printing facilities. This chapter does not apply to any county, city or town as defined in Title 35 RCW and Title 36 RCW, in respect to materials printed in the county, city or town printing facilities when said materials are used solely for said county, city or town purposes. [1979 ex.s. c 196 § 14.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.405 Exemptions—Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state or the United States. [1970 ex.s. c 101 § 3.]

Severability—Effective date—1970 ex.s. c 101: See notes following RCW 33.28.040.

82.04.408 Exemptions—Housing finance commission. This chapter does not apply to income received by the state housing finance commission under chapter 43.180 RCW. [1983 c 161 § 25.]

Severability—Effective dates—Captions not part of law—1983 c 161: See RCW 43.180.903 and 43.180.904.

82.04.410 Exemptions—Hatching eggs and poultry. This chapter shall not apply to amounts derived by persons engaged in the production and sale of hatching eggs or poultry for use in the production for sale of poultry or poultry products. [1967 ex.s. c 149 § 15; 1961 c 15 § 82.04.410. Prior: 1959 c 197 § 25; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

82.04.415 Exemptions—Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs. This chapter shall not apply to:

(1) The cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased

to a county or city and such sand, gravel, or rock is either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself; or

(2) The cost of or charges for such labor and services if any such sand, gravel, or rock is sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway.

The exemption provided for in this section shall not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1965 ex.s. c 173 § 10.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.04.417 Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities. The tax imposed by chapters 82.04 and 82.16 RCW shall not apply or be deemed to apply to amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for the retirement of obligations and payment of interest thereon issued for capital purposes.

Service charges shall not be included in this exemption even though used wholly or in part for capital purposes. [1969 ex.s. c 156 § 1.]

82.04.418 Exemptions—Grants by United States government to municipal corporations or political subdivisions. The provisions of this chapter shall not apply to grants received from the state or the United States government by municipal corporations or political subdivisions of the state of Washington. [1983 1st ex.s. c 66 § 2.]

82.04.419 Exemptions—County, city, town, school district, or fire district activity. This chapter shall not apply to any county, city, town, school district, or fire district activity, regardless of how financed, other than a utility or enterprise activity as defined by the state auditor pursuant to RCW 35.33.111 and 36.40.220 and upon which the tax imposed pursuant to this chapter had previously applied. Nothing contained in this section shall limit the authority of the legislature to authorize the imposition of such tax prospectively upon such activities as the legislature shall specifically designate. [1983 1st ex.s. c 66 § 3.]

82.04.423 Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives. (1) This chapter shall not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

(a) Does not own or lease real property within this state; and

(b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and

(c) Is not a corporation incorporated under the laws of this state; and

(d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section shall be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to the enactment of this section. [1983 1st ex.s. c 66 § 5.]

Reviser's note: The effective date of 1983 1st ex.s. c 66 is August 23, 1983.

82.04.425 Exemptions—Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller; nor to sales by a wholly owned subsidiary of a person making sales at retail which are exempt under RCW 82.08.0262 when the parent corporation shall have paid the tax imposed under this chapter. [1980 c 37 § 78; 1965 ex.s. c 173 § 9; 1961 c 15 § 82.04.425. Prior: 1955 c 95 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.04.427 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.04.4271 Deductions—Membership fees and certain service fees by nonprofit youth organization. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a nonprofit youth organization:

(1) As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or

(2) From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

For purposes of this section: "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. [1981 c 74 § 1.]

82.04.4281 Deductions—Investments—Dividends from subsidiary corporations. In computing tax there may be deducted from the measure of tax amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations. [1980 c 37 § 2. Formerly RCW 82.04.430(1).]

Intent—1980 c 37: "The separation of sales tax exemption, use tax exemption, and business and occupation deduction sections into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the exemptions or deductions involved." [1980 c 37 § 1.]

82.04.4282 Deductions—Initiation fees, dues, contributions, donations, tuition fees, charges for operating private kindergartens, and endowment funds. In computing tax there may be deducted from the measure of tax amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees, charges made for operation of privately operated kindergartens, and endowment funds. This paragraph shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction hereunder. [1980 c 37 § 3. Formerly RCW 82.04.430(2).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4283 Deductions—Cash discount taken by purchaser. In computing tax there may be deducted from the measure of tax the amount of cash discount actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extractive or manufacturing classifications with respect to

articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the provisions of RCW 82.04.450. [1980 c 37 § 4. Formerly RCW 82.04.430(3).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4284 Deductions—Credit losses of accrual basis taxpayers. In computing tax there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis. [1980 c 37 § 5. Formerly RCW 82.04.430(4).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4285 Deductions—Motor vehicle fuel taxes. In computing tax there may be deducted from the measure of tax so much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state or the United States government upon the sale thereof. [1980 c 37 § 6. Formerly RCW 82.04.430(5).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4286 Deductions—Nontaxable business. In computing tax there may be deducted from the measure of tax amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 7. Formerly RCW 82.04.430(6).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4287 Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used. In computing tax there may be deducted from the measure of tax amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in RCW 82.04.330, either as agent or as independent contractor. [1980 c 37 § 8. Formerly RCW 82.04.430(7).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4288 Deductions—Compensation for services to patients and attendant sales of prescription drugs by publicly operated hospitals. In computing tax there may be deducted from the measure of tax amounts derived as compensation for services rendered or to be rendered to patients or from sales of prescription drugs as defined in RCW 82.08.0281 furnished as an integral part of services rendered to patients by a hospital, as defined in chapter 70.41 RCW, devoted to the care of human beings with respect to the prevention or treatment of disease, sickness, or suffering, when such hospital is operated by the United States or any of its instrumentalities, or by the state, or any of its political subdivisions. [1980 c 37 § 9. Formerly RCW 82.04.430(8).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4289 Deductions—Compensation for services to patients and attendant sales of prescription drugs by nonprofit hospitals, nonprofit kidney dialysis facilities, nursing homes and homes for unwed mothers operated by religious or charitable organizations. In computing tax there may be deducted from the measure of tax amounts derived as compensation for services rendered to patients or from sales of prescription drugs as defined in RCW 82.08.0281 furnished as an integral part of services rendered to patients by a hospital, as defined in chapter 70.41 RCW, which is operated as a nonprofit corporation, a kidney dialysis facility operated as a nonprofit corporation, whether or not operated in connection with a hospital, nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. In no event shall any such deduction be allowed, unless the hospital building is entitled to exemption from taxation under the property tax laws of this state. [1981 c 178 § 2; 1980 c 37 § 10. Formerly RCW 82.04.430(9).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4291 Deductions—Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290. In computing tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290. [1980 c 37 § 11. Formerly RCW 82.04.430(10).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4292 Deductions—Interest on investments or loans secured by mortgages or deeds of trust. In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. [1980 c 37 § 12. Formerly RCW 82.04.430(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4293 Deductions—Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. [1980 c 37 § 13. Formerly RCW 82.04.430(12).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic

products, or their cooperatives. In computing tax there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities. [1980 c 37 § 14. Formerly RCW 82.04.430(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4295 Deductions—Manufacturing activities completed outside the United States. In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if:

(1) Any additional processing of such articles in this state consists of minor final assembly only; and

(2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; and

(3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and

(4) The articles are sold and shipped outside the state. [1980 c 37 § 15. Formerly RCW 82.04.430(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes. In computing tax there may be deducted from the measure of tax that portion of amounts received by any funeral home licensed to do business in this state which is received as reimbursements for expenditures (for goods supplied or services rendered by a person not employed by or affiliated or associated with the funeral home) and advanced by such funeral home as an accommodation to the persons paying for a funeral, so long as such expenditures and advances are billed to the persons paying for the funeral at only the exact cost thereof and are separately itemized in the billing statement delivered to such persons. [1980 c 37 § 16. Formerly RCW 82.04.430(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4297 Deductions—Compensation from public entities for health or social welfare services. In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision. [1980 c 37 § 17. Formerly RCW 82.04.430(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

"Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined: RCW 82.04.431.

82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations. (1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

(a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

(b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

(c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

(2) For the purposes of this section "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

(3) To qualify for the deductions under this section:

(a) The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

(b) Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;

(c) Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members. [1980 c 37 § 18. Formerly RCW 82.04.430(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.431 "Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined. (1) For the purposes of RCW 82.04.4297, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection

(2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(1) Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state. [1986 c 261 § 6; 1985 c 431 § 3; 1983 1st ex.s. c 66 § 1; 1980 c 37 § 80; 1979 ex.s. c 196 § 6.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.432 Deductions—Municipal sewer service fees or charges. In computing the tax imposed by this chapter, municipal sewerage utilities and other public corporations imposing and collecting fees or charges for sewer service may deduct from the measure of the tax, amounts paid to another municipal corporation or governmental agency for sewerage interception, treatment or disposal. [1967 ex.s. c 149 § 17.]

82.04.4322 Deductions—Artistic or cultural organization—Compensation from United States, state, etc., for artistic or cultural exhibitions, performances, or programs. In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or subdivision thereof as compensation for, or to support, artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public. [1981 c 140 § 1.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.04.4324 Deductions—Artistic or cultural organization—Deduction for tax under RCW 82.04.240—Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs. In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturing under RCW 82.04.240, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public. [1981 c 140 § 2.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.04.4326 Deductions—Artistic or cultural organizations—Tuition charges for attending artistic or cultural education programs. In computing tax there may be deducted from the measure of tax amounts received by artistic or cultural organizations as tuition charges collected for the privilege of attending artistic or cultural education programs. [1981 c 140 § 3.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities. In computing tax there may be deducted from the measure of tax those amounts received by artistic or cultural organizations which represent income derived from business activities conducted by the organization. [1985 c 471 § 6.]

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.04.4328 "Artistic or cultural organization" defined. (1) For the purposes of RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the corporation shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1985 c 471 § 7; 1981 c 140 § 6.]

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

82.04.4329 Deductions—Health insurance pool members—Deficit assessments. In computing tax there may be deducted from the measure of tax the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted. Amounts deducted under RCW 48.14.022 may not be deducted under this section. [1987 c 431 § 24.]

Severability—1987 c 431: See RCW 43.41.910.

82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce—Construction. (1) In computing tax there may be deducted from the measure of tax amounts derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce.

(2) Nothing in this section shall be construed to imply that amounts which may be deducted under this section were taxable under Title 82 RCW prior to the enactment of this section. [1985 c 471 § 16.]

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

82.04.435 Credits for certain manufacturers. In computing tax under this chapter there may be credited against the amount of the tax the following items:

As to persons engaging in activities defined in RCW 82.04.120 (the definition of the term "to manufacture"), an amount not to exceed the tax actually paid under chapter 82.08 RCW (Retail Sales Tax) or chapter 82.12 RCW (Use Tax) by such persons or their lessors or their contract vendors, on materials, labor and services in the construction of new buildings or the enlarging of existing buildings directly used in such activities. Where a building is used partly for manufacturing and partly for other purposes the applicable tax credit shall be determined by apportionment of the costs of construction under such rules as the department of revenue shall provide. For purposes of this section the term "buildings" shall mean and include only those structures used to house or shelter manufacturing activities, including the usual lighting, heating, ventilating and sanitary plumbing facilities. The term shall include plant offices and warehouses or other storage facilities for the storage of raw materials or finished goods when such facilities are essential to and an integral part of a factory, mill or manufacturing plant, but shall not include manufacturing or industrial fixtures or equipment such as tanks, conveyor systems,

cranes, industrial machinery and related facilities irrespective of whether or not such fixtures or equipment are affixed to the realty. Notwithstanding the foregoing, the term "buildings" shall also include potlines and furnaces used directly in the manufacturing of metals. The phrase "construction of buildings" refers only to new or enlarged buildings and not to the repair or renovation of existing buildings.

This credit shall be allowable only against tax payable by the manufacturer and measured by the value of products or gross proceeds of sales of articles, substances or commodities manufactured in this state, and shall be allowable only against any tax payable which is attributable to manufacturing occurring in the particular factory, mill or manufacturing plant in which such buildings are located.

No tax credit claimed shall be deducted on any return until such claim has been approved by the department of revenue or until ninety days after such claim has been submitted to the department of revenue for approval. This credit shall not be allowable for tax paid on purchases of material, labor or services on which the supplier thereof became entitled to compensation prior to July 1, 1964 or subsequent to January 1, 1971: *Provided*, That the credit shall be allowable for the tax paid on such purchases pursuant to any contract entered into prior to January 1, 1971 if such tax is paid on such contract purchases prior to July 1, 1972: *And provided further*, That with respect only to the construction of buildings used directly in the manufacturing of metals, this credit shall be allowable for tax paid on all purchases pursuant to construction which was in progress on January 1, 1971, and was completed after that date.

Any credits granted prior to July 1, 1969 pursuant to this section shall not be affected by *this 1969 amendatory act. [1971 ex.s. c 299 § 6; 1969 ex.s. c 257 § 1; 1967 ex.s. c 89 § 1; 1965 ex.s. c 173 § 26.]

***Reviser's note:** "This 1969 amendatory act" [1969 ex.s. c 257] is the amendment to RCW 82.04.435 by 1969 ex.s. c 257.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.04.440 Persons taxable on multiple activities—Credits. (1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250 or 82.04.270 shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260 subsection (4) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and subsections (2), (3), (4), (5), and (7) of RCW 82.04.260, and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states. [1987 2nd ex.s. c 3 § 2; 1985 c 190 § 1; 1981 c 172 § 5; 1967 ex.s. c 149 § 16; 1965 ex.s. c 173 § 12; 1961 c 15 § 82.04.440. Prior: 1959 c 211 § 3; 1951 1st ex.s. c 9 § 1; 1950 ex.s. c 5 § 2; 1949 c 228 § 2-A; 1943 c 156 § 3; 1941 c 178 § 3; 1939 c 225 § 3; 1937 c 227 § 3; 1935 c 180 § 6; Rem. Supp. 1949 § 8370-6.]

Legislative findings and intent—1987 2nd ex.s. c 3: "The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to

achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, this act extends the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage." [1987 2nd ex.s. c 3 § 1.]

Application to prior reporting periods—1987 2nd ex.s. c 3: "If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before August 11, 1987, in respect to RCW 82.04.440 as it existed before August 11, 1987, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits." [1987 2nd ex.s. c 3 § 3.]

Severability—1987 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 2nd ex.s. c 3 § 4.]

Severability—1985 c 190: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 190 § 8.]

Effective dates—1981 c 172: See note following RCW 82.04.240.

82.04.444 Credit for property taxes paid on business inventories—Verification of payment—Penalty. (1) Each taxpayer requesting business and occupation tax credit under *RCW 82.04.442 shall verify, by completing and signing a form prepared and made available by the department of revenue, payment of business inventory taxes on which such credit is based.

(2) Any person signing a false claim with the intent to defraud or evade the payment of any tax shall be guilty of a gross misdemeanor. [1974 ex.s. c 169 § 5.]

***Reviser's note:** "RCW 82.04.442" was repealed by 1983 1st ex.s. c 62 § 14.

Legislative intent—Review—Reports—1974 ex.s. c 169: "This 1974 act is intended to stimulate the economy of the state, and thereby to increase the revenues of the state and its local taxing districts. The department of revenue shall review the impact of this 1974 act upon the economy and revenues of the state and its local taxing districts, and shall report thereon biennially to the legislature. Recommendations for additional legislation shall be included in such reports if such legislation is needed to assure that the economic stimulus provided by this 1974 act is balanced by increased revenues." [1974 ex.s. c 169 § 1.]

Severability—1974 ex.s. c 169: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 169 § 10.]

Effective date—1974 ex.s. c 169: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 10, 1974." [1974 ex.s. c 169 § 11.]

Powers of department of revenue to promulgate rules and prescribe procedures to carry out this section: RCW 84.40.405.

Rules and regulations, procedures: RCW 84.40.405.

82.04.445 Credit for property taxes paid on business inventories—Falsification—Penalty and interest. If

the department of revenue finds that any taxpayer received any tax credit under *RCW 82.04.442 based on false or fraudulent information supplied by such taxpayer the amount of taxes avoided thereby shall be collected together with statutory interest thereon, and in addition a twenty-five percent penalty shall be due thereon. [1974 ex.s. c 169 § 6.]

***Reviser's note:** "RCW 82.04.442" was repealed by 1983 1st ex.s. c 62 § 14.

Severability—Effective date—Intent—1974 ex.s. c 169: See notes following RCW 82.04.444.

Rules and regulations, procedures: RCW 84.40.405.

82.04.450 Value of products, how determined. (1)

The value of products, including byproducts, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or byproducts by the seller, except:

(a) Where such products, including byproducts, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products: *Provided*, That the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values. [1983 1st ex.s. c 55 § 3; 1975 1st ex.s. c 278 § 42; 1961 c 15 § 82.04.450. Prior: 1949 c 228 § 3; 1941 c 178 § 4; 1935 c 180 § 7; Rem. Supp. 1949 § 8370-7.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.460 Business within and without state—Apportionment. (1) Any person rendering services taxable under RCW 82.04.290 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of

computing tax liability under RCW 82.04.290, apportion to this state that portion of his gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of his total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

(2) Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.

(3) The department shall by rule provide a method or methods of apportioning or allocating gross income derived from sales of telephone services taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services. [1985 c 7 § 154; 1983 2nd ex.s. c 3 § 28; 1975 1st ex.s. c 291 § 9; 1961 c 15 § 82.04.460. Prior: 1941 c 178 § 5; 1939 c 225 § 4; Rem. Supp. 1941 § 8370-8a.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

82.04.470 Resale certificate—Burden of proof.

Unless a seller has taken from the purchaser a resale certificate signed by, and bearing the name and address and registration number of the purchaser to the effect that the property or service was purchased for resale, or unless the nature of the transaction is clearly shown as a sale at wholesale by the books and records of the taxpayer in such other manner as the department of revenue shall by regulation provide, the burden of proving that a sale of tangible personal property, or of telephone service as defined in RCW 82.04.065, was not a sale at retail shall be upon the person who made it. [1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.480 Sales in own name—Sales as agent. Every consignee, bailee, factor, or auctioneer having either

actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name and actually so selling, shall be deemed the seller of such tangible personal property within the meaning of this chapter; and further, the consignor, bailor, principal, or owner shall be deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

The burden shall be upon the taxpayer in every case to establish the fact that he is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as the department of revenue shall by general regulation provide. [1975 1st ex.s. c 278 § 44; 1961 c 15 § 82.04.480. Prior: 1935 c 180 § 10; RRS § 8370-10.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.500 Tax part of operating overhead. It is not the intention of this chapter that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons. [1961 c 15 § 82.04.500. Prior: 1935 c 180 § 14; RRS § 8370-14.]

82.04.510 General administrative provisions invoked. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. Taxpayers submitting monthly estimates of taxes due under this chapter shall be subject to the provisions of chapter 82.32 RCW if they fail to remit ninety percent of the taxes actually collected or due for the reporting period. [1961 c 15 § 82.04.510. Prior: 1959 c 197 § 28; 1935 c 180 § 15; RRS § 8370-15.]

82.04.600 Chapter not to apply to certain materials printed in county, city, town, school district, educational service district, library or library district. This chapter does not apply to any county as defined in Title 36 RCW, any city or town as defined in Title 35 RCW, any school district or educational service district as defined in Title 28A RCW, or any library or library district as defined in Title 27 RCW, in respect to materials printed in the county, city, town, school district, educational district, library or library district facilities when the materials are used solely for county, city, town, school district, educational district, library, or library district purposes. [1979 ex.s. c 266 § 8.]

82.04.900 Construction—1961 c 15. RCW 82.04.440 shall have retrospective effect to August 1, 1950, as well as have prospective effect. [1961 c 15 § 82.04.900. Prior: 1951 1st ex.s. c 9 § 15.]

Chapter 82.08

RETAIL SALES TAX

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Hotel, motel, etc., special tax for stadium financing, deduction of payment from sales tax liability: RCW 67.28.190.

Local sales tax: Chapter 82.14 RCW.

82.08.010 Definitions. For the purposes of this chapter:

(1) "Selling price" means the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible property sold,

the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; but shall not include the amount of cash discount actually taken by a buyer; and shall be subject to modification to the extent modification is provided for in RCW 82.08.080.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe;

(2) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principal, except "seller" does not mean the state and its departments and institutions when making sales to the state and its departments and institutions;

(3) "Buyer" and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter. [1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 78 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Effective dates—1983 1st ex.s. c 55: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.] "Section 12 of this act" consists of the enactment of RCW 84.36.043.

82.08.020 Retail sales tax imposed. (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) The tax imposed under this chapter shall apply to successive retail sales of the same property.

(3) The rate provided in this section applies to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—1983 c 7: "This act shall not be construed as affecting any existing right acquired, or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted, nor any proceeding instituted, under those sections." [1983 c 7 § 34.]

Severability—1983 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 7 § 35.]

Effective dates—1983 c 7: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1983, except as follows:

(1) Sections 9 through 22, and 25 through 31 of this act shall take effect June 30, 1983.

(2) Sections 23 and 24 of this act shall take effect January 1, 1984, for taxes first due in 1984 and thereafter.

The department of revenue and the department of licensing shall immediately take necessary steps to ensure that all sections of this act are properly implemented on their effective dates. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 7 § 37.]

Reviser's note: (1) "Sections 9 through 22 of this act" consist of the enactment of RCW 82.49.010, 82.49.030, 82.49.040, 82.49.050, 82.49.060, 88.02.010, 88.02.020, 88.02.030, 88.02.040, 88.02.050, 88.02.060, 88.02.100, 88.02.090, and 88.02.110, respectively.

(2) "Sections 23 and 24 of this act" consist of the 1983 c 7 amendments to RCW 84.36.080 and 84.36.090, respectively.

(3) "Section 25 of this act" is a footnote to RCW 82.49.010.

(4) "Section 26 of this act" is a legislative directive and, therefore, uncodified.

(5) "Section 27 of this act" consists of the 1983 c 7 amendment to RCW 82.48.020.

(6) "Sections 28 through 31 of this act" were vetoed by the governor.

(7) "This act" consists of the 1983 c 7 amendments to RCW 82.02.030, 82.08.020, 82.12.020, 82.32.090, 82.48.020, 84.36.080, and 84.36.090 and the enactment of RCW 82.32.400, 82.49.010, 82.49.030, 82.49.040, 82.49.050, 82.49.060, 88.02.010, 88.02.020, 88.02.030, 88.02.040, 88.02.050, 88.02.060, 88.02.100, 88.02.090, and 88.02.110 and a temporary section (uncodified) which appears as a footnote to RCW 82.49.010.

Severability—1982 1st ex.s. c 35: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 35 § 47.]

Effective dates—Expiration date—1982 1st ex.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing

public institutions, and shall take effect immediately, except that sections 28, 29, and 30 of this act shall take effect on May 1, 1982, sections 33 and 34 of this act shall take effect on July 1, 1983, and sections 35 through 38 of this act shall take effect on January 1, 1983.

Sections 28 and 29 of this act shall expire on July 1, 1983. The additional taxes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 1st ex.s. c 35 § 48.]

Reviser's note: (1) "Sections 28 and 29 of this act" consist of the enactment of RCW 82.08.0292 and 82.12.0292, respectively.

(2) "Section 30 of this act" consists of the repeal of RCW 82.08.0284 and 82.12.0278.

(3) "Sections 33 and 34 of this act" consist of the enactment of RCW 82.08.0293 and 82.12.0293, respectively.

(4) "Sections 35 and 36 of this act" consist of the enactment of RCW 82.08.037 and 82.12.037, respectively.

(5) "Sections 37 and 38 of this act" are the 1982 1st ex.s. c 35 amendments to RCW 82.08.100 and 82.12.070, respectively.

(6) "This act" consists of the 1982 1st ex.s. c 35 amendments to RCW 82.08.020, 82.04.2901, 82.08.150, 82.08.160, 82.16.020, 82.16.030, 82.20.010, 82.24.020, 82.26.020, 82.27.020, 82.29A.030, 82.44.110, 82.44.150, 82.45.060, 48.14.020, 41.16.050, 41.24.030, 54.28.020, 54.28.025, 54.28.040, 54.28.050, 54.28.055, 66.24.210, 66.24.290, 82.44.020, 82.32.045, 82.08.100, and 82.12.070; the enactment of 82.08.0292, 82.12.0292, 82.02.030, 82.08.0293, 82.12.0293, 82.08.037, 82.12.037, 43.136.020, 43.136.020, 43.136.030, 43.136.040, 43.136.050, 43.136.060, 43.136.070, and a temporary section (uncodified); and the repeal of RCW 82.08.0284 and 82.12.0278.

(7) The effective date of all sections of "this act" not specifically mentioned is April 19, 1982.

Effective date—1975-'76 2nd ex.s. c 130: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That the provisions of this 1976 amendatory act shall be null and void in the event chapter ... (Substitute Senate Bill No. 2778), Laws of 1975-'76 2nd ex. sess. is approved and becomes law." [1975-'76 2nd ex.s. c 130 § 4.]

Reviser's note: (1) The foregoing annotation applies to the amendments to RCW 82.08.020 and 82.12.020 and to the enactment of RCW 82.04.2901 by 1975-'76 2nd ex.s. c 130.

(2) "Substitute Senate Bill No. 2778" referred to above failed to become law.

82.08.0251 Exemptions—Casual and isolated sales. The tax levied by RCW 82.08.020 shall not apply to casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under chapters 82.04 or 82.16 RCW: *Provided*, That the exemption provided by this section shall not be construed as providing any exemption from the tax imposed by chapter 82.12 RCW. [1980 c 37 § 19. Formerly RCW 82.08.030(1).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0252 Exemptions—Sales by persons taxable under chapter 82.16 RCW. The tax levied by RCW 82.08.020 shall not apply to sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under chapter 82.16 RCW, when the gross proceeds from such sales must be included in the measure of the tax imposed under said chapter. [1980 c 37 § 20. Formerly RCW 82.08.030(2).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0253 Exemptions—Sale and distribution of newspapers. The tax levied by RCW 82.08.020 shall not

apply to the distribution and newsstand sale of newspapers. [1980 c 37 § 21. Formerly RCW 82.08.030(3).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0254 Exemptions—Nontaxable sales. The tax levied by RCW 82.08.020 shall not apply to sales which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 22. Formerly RCW 82.08.030(4).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes; and

(b) Motor vehicle and special fuel if:

(i) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or

(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or

(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

Reviser's note: This section was amended by 1983 1st ex.s. c 35 § 2 and 1983 c 108 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1983 1st ex.s. c 35: "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0256 Exemptions—Sale of the operating property of a public utility to the state or a political subdivision. The tax levied by RCW 82.08.020 shall not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for

use in conducting any business defined in RCW 82.16-.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). [1980 c 37 § 24. Formerly RCW 82.08.030(6).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0257 Exemptions—Auction sales of tangible personal property used in farming. The tax levied by RCW 82.08.020 shall not apply to auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise. [1980 c 37 § 25. Formerly RCW 82.08.030(7).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0258 Exemptions—Sales to federal corporations providing aid and relief. The tax levied by RCW 82.08.020 shall not apply to sales to corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1980 c 37 § 26. Formerly RCW 82.08.030(8).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0259 Exemptions—Sales of purebred livestock for breeding—Cattle and milk cows. The tax levied by RCW 82.08.020 shall not apply to sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association; sales of cattle and milk cows used on the farm. [1980 c 37 § 27. Formerly RCW 82.08.030(9).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0261 Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce. The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property (other than the type referred to in RCW 82-.08.0262) for use by the purchaser in connection with the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce: *Provided*, That any actual use of such property in this state shall, at the time of such actual use, be subject to the tax imposed by chapter 82.12 RCW. [1980 c 37 § 28. Formerly RCW 82.08.030(10).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0262 Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc. The tax levied by RCW 82.08.020 shall

not apply to sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state; also sales of tangible personal property which becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving. [1980 c 37 § 29. Formerly RCW 82.08.030(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0263 Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: *Provided*, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission and that the vehicles will first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160. [1980 c 37 § 30. Formerly RCW 82.08.030(12).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0264 Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160, or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state. [1980 c 37 § 31. Formerly RCW 82.08.030(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0265 Exemptions—Sales to nonresidents of tangible personal property which becomes a component of

property of the nonresident by installing, repairing, etc.—Labor and services for installing, repairing, etc. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of tangible personal property which becomes a component part of any machinery or other article of personal property belonging to such nonresident, in the course of installing, repairing, cleaning, altering, or improving the same and also sales of or charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving, of personal property of or for a nonresident, but this section shall apply only when the seller agrees to, and does, deliver the property to the purchaser at a point outside this state, or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. [1980 c 37 § 32. Formerly RCW 82.08.030(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0266 Exemptions—Sales of watercraft to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the Federal Boating Act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as provided by the department of revenue and signed by the purchaser or his agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, one copy to be filed with the department of revenue with the regular report and a duplicate to be retained by the dealer. [1980 c 37 § 33. Formerly RCW 82.08.030(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0267 Exemptions—Sales of poultry for producing poultry and poultry products for sale. The tax levied by RCW 82.08.020 shall not apply to sales of poultry for use in the production for sale of poultry or poultry products. [1980 c 37 § 34. Formerly RCW 82.08.030(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0268 Exemptions—Sales of machinery and implements for farming to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of machinery and implements for use in conducting a farming activity, when such machinery and implements will be transported immediately outside the state. As proof of exemption, an affidavit or certification in such form as the department of revenue shall require shall be made for each such sale, to be retained as a business record of the seller. [1980 c 37 § 35. Formerly RCW 82.08.030(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0269 Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state. The tax levied by RCW 82.08.020 shall not apply to sales for use in states, territories and possessions of the United States which are not contiguous to any other state, but only when, as a necessary incident to the contract of sale, the seller delivers the subject matter of the sale to the purchaser or his designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in such non-contiguous states, territories and possessions. [1980 c 37 § 36. Formerly RCW 82.08.030(18).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0271 Exemptions—Sales to municipal corporations, the state, and political subdivisions of tangible personal property, labor and services on watershed protection and flood prevention contracts. The tax levied by RCW 82.08.020 shall not apply to sales to municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services rendered in respect to contracts for watershed protection and/or flood prevention. This exemption shall be limited to that portion of the selling price which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Laws 566, as amended. [1980 c 37 § 37. Formerly RCW 82.08.030(19).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0272 Exemptions—Sales of semen for artificial insemination of livestock. The tax levied by RCW 82.08.020 shall not apply to sales of semen for use in the artificial insemination of livestock. [1980 c 37 § 38. Formerly RCW 82.08.030(20).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property for use outside the state—**Permit—Fees—Penalties.** The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser has applied for and received from the department of revenue a permit certifying (1) that he is a bona fide resident of a state or possession or Province of Canada other than the state of Washington, (2) that such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (3) that he does agree, when requested, to grant the department of revenue access to such records and other forms of verification at his place of residence to assure that such

purchases are not first used substantially in the state of Washington.

Any person claiming exemption from retail sales tax under the provisions of this section must display a non-resident permit as herein provided, and any vendor making a sale to a nonresident without collecting the tax must examine such permit, identify the purchaser as the person to whom the nonresident permit was issued, and maintain records which shall show the permit number attributable to each nontaxable sale.

Permits shall be personal and nontransferable, shall be renewable annually, and shall be issued by the department of revenue upon payment of a fee of five dollars. The department may in its discretion designate independent agents for the issuance of permits, according to such standards and qualifications as the department may prescribe. Such agents shall pay over and account to the department for all permit fees collected, after deducting as a collection fee the sum of one dollar for each permit issued.

Any person making fraudulent statements in order to secure a permit shall be guilty of perjury. Any person making tax exempt purchases by displaying a permit not his own, or a counterfeit permit, with intent to violate the provisions of this section shall be guilty of a misdemeanor and, in addition, may be subject to a penalty not to exceed the amount of the tax due on such purchases. Any vendor who makes sales without collecting the tax to a person who does not hold a valid permit, and any vendor who fails to maintain records of permit numbers as provided in this section shall be personally liable for the amount of tax due. [1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Study—1982 1st ex.s. c 5: "The department of revenue shall conduct a study of the tax gain resulting from nonresident permits as provided for in RCW 82.08.0273. This study shall be conducted in conjunction with the study authorized by section 26, chapter 340, Laws of 1981." [1982 1st ex.s. c 5 § 2.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0274 Exemptions—Sales of form lumber to person engaged in constructing, repairing, etc., structures for consumers. The tax levied by RCW 82.08.020 shall not apply to sales of form lumber to any person engaged in the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: *Provided*, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 40. Formerly RCW 82.08.030(22).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0275 Exemptions—Sales of and labor and service charges for mining, sorting, crushing, etc., of sand, gravel, and rock from county or city quarry for public road purposes. The tax levied by RCW 82.08.020 shall not apply to sales of, cost of, or charges made for labor and services performed in respect to the mining,

sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel and rock when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to sales of, cost of, or charges made for such labor and services, if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 41. Formerly RCW 82.08.030(23).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0276 Exemptions—Sales of wearing apparel for use only as a sample for display for sale. The tax levied by RCW 82.08.020 shall not apply to sales of wearing apparel to persons who themselves use such wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample. [1980 c 37 § 42. Formerly RCW 82.08.030(24).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0277 Exemptions—Sales of pollen. The tax levied by RCW 82.08.020 shall not apply to sales of pollen. [1980 c 37 § 43. Formerly RCW 82.08.030(25).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0278 Exemptions—Sales between political subdivisions resulting from annexation or incorporation. The tax levied by RCW 82.08.020 shall not apply to sales to one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 44. Formerly RCW 82.08.030(26).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0279 Exemptions—Renting or leasing of motor vehicles and trailers to a nonresident for use in the transportation of persons or property across state boundaries. The tax levied by RCW 82.08.020 shall not apply to the renting or leasing of motor vehicles and trailers to a nonresident of this state for use exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and for purposes of this exemption the term "nonresident" shall apply to a renter or lessee who has one or more places of business in this state as well as in one or more other states but the exemption for non-residents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained and operated from the renter's or lessee's place of

business in another state. [1980 c 37 § 45. Formerly RCW 82.08.030(27).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0281 Exemptions—Sales of prescription drugs. The tax levied by RCW 82.08.020 shall not apply to sales of prescription drugs, including sales to the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge. The term "prescription drugs" shall include any medicine, drug, prescription lens, or other substance other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans ordered by (1) the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions, or (2) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist, or (3) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist, or (4) physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans. [1980 c 37 § 46. Formerly RCW 82.08.030(28).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0282 Exemptions—Sales of returnable containers for beverages and foods. The tax levied by RCW 82.08.020 shall not apply to sales of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 47. Formerly RCW 82.08.030(29).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0283 Exemptions—Sales of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. [1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Effective date—1986 c 255: "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0285 Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges. The tax levied by RCW 82.08.020 shall not apply to sales of ferry vessels to the state of Washington or to a local governmental unit in the state of Washington for use in transporting pedestrians, vehicles, and goods within or outside the

territorial waters of the state; also sales of tangible personal property which becomes a component part of such ferry vessels; also sales of or charges made for labor and services rendered in respect to constructing or improving such ferry vessels. [1980 c 37 § 50. Formerly RCW 82.08.030(32).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0286 Exemptions—Alcohol for use as fuel. (Expires December 31, 1992.) The tax imposed by RCW 82.08.020 shall not apply to alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. [1980 c 131 § 1.]

Expiration date—RCW 82.08.0286 and 82.12.0281: "RCW 82.08.0286 and 82.12.0281 shall expire December 31, 1992." [1985 c 371 § 1; 1980 c 131 § 6.]

82.08.0287 Exemptions—Sales of vans as ride-sharing vehicles. (Expires June 30, 1995.) The tax imposed by this chapter shall not apply to sales of vans which are to be used regularly as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver. [1980 c 166 § 1.]

Severability—1980 c 166: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 166 § 4.]

Expiration date—1987 c 175; 1980 c 166: "RCW 82.08.0287, 82.12.0282, and 82.44.015 shall expire on June 30, 1995." [1987 c 175 § 1; 1980 c 166 § 5.]

Ride-sharing vehicles—*Special plates: RCW 46.16.023.*

82.08.0288 Exemptions—Lease of certain irrigation equipment. The tax levied by RCW 82.08.020 shall not apply to the lease of irrigation equipment if:

(1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;

(3) The irrigation equipment is attached to the land in whole or in part; and

(4) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [1983 1st ex.s. c 55 § 5.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.08.0289 Exemptions—Certain network telephone service. (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Network telephone service, other than toll service, to residential customers.

(b) Network telephone service which is paid for by inserting coins in coin-operated telephones.

(2) As used in this section:

(a) "Network telephone service" has the meaning given in RCW 82.04.065.

(b) "Residential customer" means an individual subscribing to a residential class of telephone service.

(c) "Toll service" does not include customer access line charges for access to a toll calling network. [1983 2nd ex.s. c 3 § 30.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.08.0291 Exemptions—Sales of amusement and recreation services by nonprofit youth organization. The tax imposed by RCW 82.08.020 shall not apply to the sale of amusement and recreation services by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization. [1981 c 74 § 2.]

82.08.0293 Exemptions—Sales of food products for human consumption. (1) The tax levied by RCW 82.08.020 shall not apply to sales of food products for human consumption.

"Food products" include cereals and cereal products, oleomargarine, meat and meat products including livestock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

"Food products" include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.

"Food products" do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

The exemption of "food products" provided for in this subsection shall not apply: (a) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others, except for food products furnished as meals (i) under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6) or (ii) which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW, or (b) when the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer, or (c) when the food products are sold for consumption within a place, the entrance to which is subject

to an admission charge, except for national and state parks and monuments.

(2) Subsection (1) of this section notwithstanding, the retail sale of food products is subject to sales tax under RCW 82.08.020 if the food products are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

This subsection does not apply to hot prepared food products, other than food products which are heated after they have been dispensed from the vending machine.

For tax collected under this subsection, the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.0294 Exemptions—Sales of feed for cultivating or raising fish for sale. The tax levied by RCW 82.08.020 shall not apply to sales of feed to persons for use in the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 3.]

82.08.0295 Exemptions—Lease amounts and re-purchase amount for certain property under sale/leaseback agreement. The tax levied by RCW 82.08.020 shall not apply to lease amounts paid by a seller/lessee to a lessor after April 3, 1986, under a sale/leaseback agreement in respect to property, including equipment and components, used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish, nor to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term: *Provided*, That the seller/lessee previously paid the tax imposed by this chapter or chapter 82.12 RCW at the time of acquisition of the property, including equipment and components. [1986 c 231 § 3.]

82.08.0296 Exemptions—Sales of feed consumed by livestock at a public livestock market. The tax levied by RCW 82.08.020 shall not apply to sales of feed consumed by livestock at a public livestock market. [1986 c 265 § 1.]

82.08.0297 Exemptions—Sales of food purchased with food stamp coupons. The tax levied by RCW 82.08.020 shall not apply to sales of eligible foods which are purchased with coupons issued under the Food Stamp Act of 1977, notwithstanding anything to the contrary in RCW 82.08.0293.

When a purchase of eligible foods is made with a combination of coupons issued under the Food Stamp Act of 1977 and cash, check, or similar payment, the cash, check, or similar payment shall be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the Food Stamp Act of 1977. [1987 c 28 § 1.]

Effective date—1987 c 28: "This act shall take effect October 1, 1987." [1987 c 28 § 3.]

82.08.0298 Exemptions—Sales of diesel fuel for use in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state. The tax levied by RCW 82.08.020 shall not apply to sales of diesel fuel for use in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 1.]

82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation. The tax levied by RCW 82.08.020 shall not apply to sales to artistic or cultural organizations of objects which are acquired for the purpose of exhibition or presentation to the general public if the objects are:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 4.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.08.033 Exemptions—Sales of used mobile homes or rental or lease of mobile homes. The tax imposed by RCW 82.08.020 shall not apply to:

- (1) Sales of used mobile homes as defined in RCW 82.45.032.
- (2) The renting or leasing of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of such mobile home is not conducted jointly with the provision of short-term lodging for transients. [1986 c 211 § 2; 1979 ex.s. c 266 § 3.]

82.08.034 Exemptions—Sales of used floating homes or rental or lease of used floating homes. The tax imposed by RCW 82.08.020 shall not apply to:

- (1) Sales of used floating homes, as defined in RCW 82.45.032;
- (2) The renting or leasing of used floating homes, as defined in RCW 82.45.032, when the rental agreement or lease exceeds thirty days in duration. [1984 c 192 § 3.]

82.08.035 Exemption for pollution control facilities. See chapter 82.34 RCW.

82.08.037 Credits and refunds—Debts deductible as worthless. A seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 35.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.040 Consignee, factor, bailee, auctioneer deemed seller. Every consignee, bailee, factor, or auctioneer authorized, engaged, or employed to sell or call for bids on tangible personal property belonging to another, and so selling or calling, shall be deemed the seller of such tangible personal property within the meaning of this chapter and all sales made by such persons are subject to its provisions even though the sale would have been exempt from tax hereunder had it been made directly by the owner of the property sold. Every consignee, bailee, factor, or auctioneer shall collect and remit the amount of tax due under this chapter with respect to sales made or called by him: *Provided*, That if the owner of the property sold is engaged in the business of selling tangible personal property in this state the tax imposed under this chapter may be remitted by such owner under such rules and regulations as the department of revenue shall prescribe. [1975 1st ex.s. c 278 § 46; 1961 c 15 § 82.08.040. Prior: 1939 c 225 § 8; 1935 c 180 § 18; RRS § 8370–18.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties. The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of the tax.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or

benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the fifteenth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax. [1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050. Prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370–21.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.08.055 Advertisement of price. A seller may advertise the price as including the tax or that the seller is paying the tax, subject to the following conditions:

(1) Unless the advertised price is one in a listed series, the words "tax included" are stated immediately following the advertised price and in print size at least half as large as the advertised price;

(2) If the advertised prices are listed in a series, the words "tax included in all prices" are placed conspicuously at the head of the list and in the same print size as the advertised prices;

(3) If a price is advertised as "tax included," the price listed on any price tag shall be shown in the same manner; and

(4) All advertised prices and the words "tax included" are stated in the same medium, be it oral or visual, and if oral, in substantially the same inflection and volume. [1985 c 38 § 2.]

82.08.060 Collection of tax—Methods and schedules. The department of revenue shall have power to adopt rules and regulations prescribing methods and

schedules for the collection of the tax required to be collected by the seller from the buyer under this chapter. The methods and schedules prescribed shall be adopted so as to eliminate the collection of fractions of one cent and so as to provide that the aggregate collections of all taxes by the seller shall, insofar as practicable, equal the amount of tax imposed by this chapter. Such schedules may provide that no tax need be collected from the buyer upon sales below a stated sum and may be amended from time to time to accomplish the purposes set forth herein. [1975 1st ex.s. c 278 § 47; 1961 c 15 § 82.08.060. Prior: 1951 c 44 § 2; 1941 c 76 § 4; 1935 c 180 § 22; Rem. Supp. 1941 § 8370-22.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.065 Collection of tax on mobile homes by county auditors or director of licensing—Remittance. In the collection of the sales tax on mobile homes, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time the mobile home dealer or selling agent applies for a new certificate of ownership for such mobile home in the instance where transfer of ownership was from a mobile home dealer or person deemed a selling agent under RCW 82.04.480, except where the applicant presents a written statement signed by the department of revenue or its duly authorized agent showing that no retail sales tax or use tax is legally due. The term "mobile home" as used in this section means a mobile home as defined in RCW 46.04.302. It shall be the duty of every mobile home dealer or selling agent to declare upon the application for a new certificate of ownership the selling price paid for the mobile home. Any person willfully misrepresenting, or failing or refusing to declare upon the application, such selling price shall be guilty of a gross misdemeanor.

Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of RCW 82.12.045 pay over and account to the state treasurer for all sales tax revenue collected under this section, after first deducting as his or her collection fee the sum of two dollars for each mobile home upon which the tax has been collected.

Any applicant who has paid sales tax to a county auditor under this section may apply to the department of revenue for refund thereof if he has reason to believe that such tax was not legally due and owing. No refund is allowed unless application therefor is received by the department of revenue within four years after payment of the tax. Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180, and 82.32.190.

The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax

imposed by this chapter. The department of revenue shall have power to adopt such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by the director of licensing in remitting sales tax revenue to the state treasurer. [1987 c 89 § 1.]

82.08.080 Vending machine and other sales. The department of revenue may authorize a seller to pay the tax levied under this chapter upon sales made under conditions of business such as to render impracticable the collection of the tax as a separate item and waive collection of the tax from the customer. Where sales are made by receipt of a coin or coins dropped into a receptacle that results in delivery of the merchandise in single purchases of smaller value than the minimum sale upon which a one cent tax may be collected from the purchaser, according to the schedule provided by the department under authority of RCW 82.08.060, and where the design of the sales device is such that multiple sales of items are not possible or cannot be detected so as practically to assess a tax, in such a case the selling price for the purposes of the tax imposed under RCW 82.08.020 shall be sixty percent of the gross receipts of the vending machine through which such sales are made. No such authority shall be granted except upon application to the department and unless the department, after hearing, finds that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided. The department, by regulation, may provide that the applicant, under this section, furnish a proper bond sufficient to secure the payment of the tax. [1986 c 36 § 2; 1975 1st ex.s. c 278 § 48; 1963 c 244 § 2; 1961 c 15 § 82.08.080. Prior: 1937 c 227 § 8; 1935 c 180 § 24; RRS § 8370-24.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.090 Installment sales and leases. In the case of installment sales and leases of personal property, the department of revenue, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [1975 1st ex.s. c 278 § 49; 1961 c 15 § 82.08.090. Prior: 1959 ex.s. c 3 § 8; 1959 c 197 § 4; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.100 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made

during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 37; 1975 1st ex.s. c 278 § 50; 1961 c 15 § 82.08.100. Prior: 1959 ex.s. c 3 § 9; 1959 c 197 § 5; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.110 Sales from vehicles. In the case of a person who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a "place of business" within the meaning of chapter 82.32 RCW. [1961 c 15 § 82.08.110. Prior: 1935 c 180 § 26; RRS § 8370-26.]

82.08.120 Refunding or rebating of tax by seller prohibited—Penalty. Whoever, excepting as expressly authorized by this chapter, refunds, remits, or rebates to a buyer, either directly or indirectly and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor. The violation of this section by any person holding a license granted by the state or any political subdivision thereof shall be sufficient grounds for the cancellation of the license of such person upon written notification by the department of revenue to the proper officer of the department granting the license that such person has violated the provisions of this section. Before any license shall be canceled hereunder, the licensee shall be entitled to a hearing before the department granting the license under such regulations as the department may prescribe. [1985 c 38 § 4; 1975 1st ex.s. c 278 § 51; 1961 c 15 § 82.08.120. Prior: 1939 c 225 § 13; 1935 c 180 § 27; RRS § 8370-27.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.140 Administration. The provisions of RCW 82.04.470 and all of the provisions of chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.08.140. Prior: 1935 c 180 § 30; RRS § 8370-30.]

82.08.150 Tax on certain sales of intoxicating liquors—Additional tax—Collection. (1) There is levied and shall be collected a tax upon each retail sale of spirits, or strong beer in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to class H licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits, or strong beer in the original package at the rate of ten percent of the selling price on sales

by Washington state liquor stores and agencies to class H licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees.

(4) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) The tax imposed in RCW 82.08.020, as now or hereafter amended, shall not apply to sales of spirits or strong beer in the original package.

(6) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(7) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective date—1973 1st ex.s. c 204: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

82.08.160 Remittance of tax—Liquor excise tax fund created. On or before the twenty-fifth day of each month, all taxes collected under RCW 82.08.150 during the preceding month shall be remitted to the state department of revenue, to be deposited with the state treasurer. Upon receipt of such moneys the state treasurer shall credit sixty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) and one hundred percent of the sums collected and remitted under RCW 82.08.150 (3) and (4) to the state general fund and thirty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) to a fund

which is hereby created to be known as the "liquor excise tax fund." [1982 1st ex.s. c 35 § 4; 1981 1st ex.s. c 5 § 26; 1969 ex.s. c 21 § 12; 1961 c 15 § 82.08.160. Prior: 1955 c 396 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

82.08.170 Apportionment and distribution from liquor excise tax fund. On the first day of the months of January, April, July and October of each year, the state treasurer shall make the apportionment and distribution of all moneys in the liquor excise tax fund to the counties, cities and towns in the following proportions: Twenty percent of the moneys in said liquor excise tax fund shall be divided among and distributed to the counties of the state in accordance with the provisions of RCW 66.08.200; eighty percent of the moneys in said liquor excise tax fund shall be divided among and distributed to the cities and towns of the state in accordance with the provisions of RCW 66.08.210. [1983 c 3 § 215; 1961 c 15 § 82.08.170. Prior: 1955 c 396 § 3.]

82.08.171 Temporary alteration in liquor excise tax distributions under RCW 82.08.170—Expiration of section. For the biennium beginning July 1, 1987, distributions of liquor excise tax receipts to counties, cities, and towns under RCW 82.08.170 shall be altered as follows: After apportioning, but prior to distributing moneys in the liquor excise tax fund to counties, cities, and towns under RCW 82.08.170, an amount equal to sixteen thousand dollars from the amount to be apportioned to counties, and sixteen thousand dollars from the amount to be apportioned to cities and towns shall be placed into the local governance study commission account for each of the quarterly distributions on July 1, 1987, October 1, 1987, January 1, 1988, and April 1, 1988.

This section shall expire June 30, 1988. [1987 c 16 § 1.]

Effective date—1987 c 16: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 16 § 6.]

**Chapter 82.12
USE TAX**

Sections

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82.12.0252	Exemptions—Use of tangible personal property upon which tax has been paid—Use of tangible personal property acquired by a previous bailee from same bailor before June 9, 1961.
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82.12.0256	Exemptions—Use of motor vehicle and special fuel—Conditions.
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82.12.0259	Exemptions—Use of tangible personal property by federal corporations providing aid and relief.
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82.12.0262	Exemptions—Use of poultry for producing poultry and poultry products for sale.
82.12.0263	Exemptions—Use of fuel by extractor or manufacturer thereof.
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82.12.0266	Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state.
82.12.0267	Exemptions—Use of semen in artificial insemination of livestock.
82.12.0268	Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers.
82.12.0269	Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes.
82.12.0271	Exemptions—Use of wearing apparel only as a sample for display for sale.
82.12.0272	Exemptions—Use of tangible personal property in single trade shows.
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82.12.0275	Exemptions—Use of prescription drugs.
82.12.0276	Exemptions—Use of returnable containers for beverages and foods.
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82.12.0281	Exemptions—Alcohol for use as fuel.
82.12.0282	Exemptions—Use of vans as ride-sharing vehicles.
82.12.0283	Exemptions—Use of certain irrigation equipment.
82.12.0284	Exemptions—Use of computers or computer components, accessories, or software donated to schools or colleges.
82.12.0293	Exemptions—Use of food products for human consumption.
82.12.0294	Exemptions—Use of feed for cultivating or raising fish for sale.
82.12.0295	Exemptions—Lease amounts and repurchase amount for certain property under sale/leaseback agreement.

82.12.0296	Exemptions—Use of feed consumed by livestock at a public livestock market.
82.12.0297	Exemptions—Use of food purchased with food stamp coupons.
82.12.0298	Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.
82.12.031	Exemptions—Use by artistic or cultural organizations of certain objects.
82.12.033	Exemption—Use of certain used mobile homes.
82.12.034	Exemption—Use of used floating homes.
82.12.035	Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.
82.12.036	Exemptions and credits—Pollution control facilities.
82.12.037	Credits and refunds—Debts deductible as worthless.
82.12.040	Retailers to collect tax—Penalty.
82.12.045	Collection of tax on motor vehicles by county auditor or director of licensing—Remittance.
82.12.060	Installment sales, leases, bailments.
82.12.070	Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless.
82.12.080	Administration.

82.12.010 Definitions. For the purposes of this chapter:

(1) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the department of revenue may prescribe.

In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules and regulations as the department of revenue may prescribe: *Provided*, That in case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price

at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules and regulations as the department of revenue may prescribe.

In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ninety days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in the first paragraph of this subsection.

In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (a) The retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

(3) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(4) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(5) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. [1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010. Prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c

225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Reviser's note: This section was amended by 1985 c 132 § 1 and by 1985 c 222 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90: "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

Severability—1975-'76 2nd ex.s. c 1: "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.12.020 Use tax imposed. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280, subsections (2) or (7). This tax will not apply with respect to the use of any article of tangible personal property purchased, extracted, produced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property in this state. This tax shall apply to the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state. Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property from the taxes imposed by such chapters. The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020, as now or hereafter amended, in the county in which the article is used. [1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020. Prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c

76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

Severability—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

82.12.0251 Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington—Use by nonresident of motor vehicle or trailer licensed in another state—Use by resident or nonresident member of armed forces of household goods, personal effects, and private automobiles acquired in another state while a resident—"State" defined. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington; or in respect to the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85-.060; or in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of Washington or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0252 Exemptions—Use of tangible personal property upon which tax has been paid—Use of tangible personal property acquired by a previous bailee from same bailor before June 9, 1961. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property purchased at retail or acquired by lease, gift or bailment if the sale thereof to, or the use thereof by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 or 82.12 RCW and such tax has been paid by the present user or by his bailor or donor; or in respect to the use of property acquired by bailment and such tax

has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 or 82.12 RCW as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and such original bailment was prior to June 9, 1961. [1980 c 37 § 52. Formerly RCW 82.12.030(2).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0253 Exemptions—Use of tangible personal property taxable under chapter 82.16 RCW. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property the sale of which is specifically taxable under chapter 82.16 RCW. [1980 c 37 § 53. Formerly RCW 82.12.030(3).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside the territorial waters of the state—Components thereof—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state. The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: *Provided*, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state; and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the

permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder. [1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0255 Exemptions—Nontaxable tangible personal property. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [1980 c 37 § 55. Formerly RCW 82.12.030(5).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. The provisions of this chapter shall not apply in respect to the use of:

(1) Motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes; and

(2) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(3) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or

(c) The fuel is taxable under chapter 82.36 or 82.38 RCW: *Provided*, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (3)(c), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue. [1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

Reviser's note: This section was amended by 1983 1st ex.s. c 35 § 3 and 1983 c 108 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1983 1st ex.s. c 35: See note following RCW 82.08.0255.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0257 Exemptions—Use of tangible personal property of the operating property of a public utility by state or political subdivision. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11). [1980 c 37 § 57. Formerly RCW 82.12.030(7).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0258 Exemptions—Use of tangible personal property previously used in farming and purchased from farmer at auction. The provisions of this chapter shall not apply in respect to the use of tangible personal property (including household goods) which have been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. [1980 c 37 § 58. Formerly RCW 82.12.030(8).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0259 Exemptions—Use of tangible personal property by federal corporations providing aid and relief. The provisions of this chapter shall not apply in respect to the use of tangible personal property by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [1980 c 37 § 59. Formerly RCW 82.12.030(9).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0261 Exemptions—Use of purebred livestock for breeding—Cattle and milk cows. The provisions of this chapter shall not apply in respect to the use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association; sales of cattle and milk cows used on the farm. [1980 c 37 § 60. Formerly RCW 82.12.030(10).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0262 Exemptions—Use of poultry for producing poultry and poultry products for sale. The provisions of this chapter shall not apply in respect to the use of poultry in the production for sale of poultry or poultry products. [1980 c 37 § 61. Formerly RCW 82.12.030(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0263 Exemptions—Use of fuel by extractor or manufacturer thereof. The provisions of this chapter shall not apply in respect to the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. [1980 c 37 § 62. Formerly RCW 82.12.030(12).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0264 Exemptions—Use of dual-controlled motor vehicles by school for driver training. The provisions of this chapter shall not apply in respect to the use of motor vehicles, equipped with dual controls, which are loaned to and used exclusively by a school in connection with its driver training program: *Provided*, That this exemption and the term "school" shall apply only to (1) the University of Washington, Washington State University, the regional universities, The Evergreen State College and the state community colleges or (2) any public, private or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station) or (3) any public vocational school meeting the standards, courses and requirements established and prescribed or approved in accordance with the Community College Act of 1967 (chapter 8, Laws of 1967 first extraordinary session). [1980 c 37 § 63. Formerly RCW 82.12.030(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0265 Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities. The provisions of this chapter shall not apply in respect to the use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to the taxes imposed by chapter 82.08 RCW or chapter 82.12 RCW. [1980 c 37 § 64. Formerly RCW 82.12.030(14).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0266 Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state. The provisions of this chapter shall not apply in respect to the use by residents of this state of motor vehicles and trailers acquired and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption shall not apply to members of the armed services called to active duty for training purposes for periods of less than six months and shall not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of any person from the armed services. [1980 c 37 § 65. Formerly RCW 82.12.030(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0267 Exemptions—Use of semen in artificial insemination of livestock. The provisions of this chapter shall not apply in respect to the use of semen in the artificial insemination of livestock. [1980 c 37 § 66. Formerly RCW 82.12.030(16).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0268 Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers. The provisions of this chapter shall not apply in respect to the use of form lumber by any person engaged in the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: *Provided*, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 67. Formerly RCW 82.12.030(17).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0269 Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes. The provisions of this chapter shall not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 68. Formerly RCW 82.12.030(18).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0271 Exemptions—Use of wearing apparel only as a sample for display for sale. The provisions of this chapter shall not apply in respect to the use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample. [1980 c 37 § 69. Formerly RCW 82.12.030(19).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0272 Exemptions—Use of tangible personal property in single trade shows. The provisions of this chapter shall not apply in respect to the use of tangible personal property held for sale and displayed in single

trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services. [1980 c 37 § 70. Formerly RCW 82.12.030(20).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0273 Exemptions—Use of pollen. The provisions of this chapter shall not apply in respect to the use of pollen. [1980 c 37 § 71. Formerly RCW 82.12.030(21).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation. The provisions of this chapter shall not apply in respect to the use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 72. Formerly RCW 82.12.030(22).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0275 Exemptions—Use of prescription drugs. The provisions of this chapter shall not apply in respect to the use of prescription drugs, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge. The term "prescription drugs" shall include any medicine, drug, prescription lens, or other substance other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans ordered by (1) the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions, or (2) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist, or (3) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist, or (4) physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans. [1980 c 37 § 73. Formerly RCW 82.12.030(23).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0276 Exemptions—Use of returnable containers for beverages and foods. The provisions of this chapter shall not apply in respect to the use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 74. Formerly RCW 82.12.030(24).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0277 Exemptions—Use of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. The provisions of this chapter shall not

apply in respect to the use of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. [1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof. The provisions of this chapter shall not apply in respect to the use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state and in respect to the use of tangible personal property which becomes a component part of any such ferry vessel. [1980 c 37 § 77. Formerly RCW 82.12.030(27).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0281 Exemptions—Alcohol for use as fuel. (Expires December 31, 1992.) The tax imposed by RCW 82.12.020 shall not apply to alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. [1980 c 131 § 2.]

Expiration date—RCW 82.08.0286 and 82.12.0281: See note following RCW 82.08.0286.

82.12.0282 Exemptions—Use of vans as ride-sharing vehicles. (Expires June 30, 1995.) The tax imposed by this chapter shall not apply with respect to the use of vans used regularly as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver, if the vans are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. [1980 c 166 § 2.]

Severability—Expiration date—1980 c 166: See notes following RCW 82.08.0287.

Ride-sharing vehicles—Special plates: RCW 46.16.023.

82.12.0283 Exemptions—Use of certain irrigation equipment. The provisions of this chapter shall not apply to the use of irrigation equipment if:

(1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;

(3) The irrigation equipment is attached to the land in whole or in part; and

(4) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [1983 1st ex.s. c 55 § 6.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.12.0284 Exemptions—Use of computers or computer components, accessories, or software donated to schools or colleges. The provisions of this chapter shall not apply in respect to the use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" means a data processor that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator during the run. [1983 1st ex.s. c 55 § 7.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.12.0293 Exemptions—Use of food products for human consumption. The provisions of this chapter shall not apply in respect to the use of food products for human consumption.

"Food products" include cereals and cereal products, oleomargarine, meat and meat products including live-stock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

"Food products" include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.

"Food products" do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

The exemption of "food products" provided for in this paragraph shall not apply: (a) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others, except for food products furnished as meals (i) under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6) or (ii) which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW, or (b) when the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer, or (c) when the food products are sold for consumption within a place, the entrance to which is subject

to an admission charge, except for national and state parks and monuments. [1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.12.0294 Exemptions—Use of feed for cultivating or raising fish for sale. The provisions of this chapter shall not apply in respect to the use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 4.]

82.12.0295 Exemptions—Lease amounts and re-purchase amount for certain property under sale/leaseback agreement. The provisions of this chapter shall not apply with respect to lease amounts paid by a seller/lessee to a lessor after April 3, 1986, under a sale/leaseback agreement in respect to property, including equipment and components, used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish, nor to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term: *Provided*, That the seller/lessee previously paid the tax imposed by this chapter or chapter 82.08 RCW at the time of acquisition of the property, including equipment and components. [1986 c 231 § 4.]

82.12.0296 Exemptions—Use of feed consumed by livestock at a public livestock market. The provisions of this chapter shall not apply with respect to the use of feed consumed by livestock at a public livestock market. [1986 c 265 § 2.]

82.12.0297 Exemptions—Use of food purchased with food stamp coupons. The provisions of this chapter shall not apply with respect to the use of eligible foods which are purchased with coupons issued under the Food Stamp Act of 1977, notwithstanding anything to the contrary in RCW 82.12.0293.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the Food Stamp Act of 1977. [1987 c 28 § 2.]

Effective date—1987 c 28: See note following RCW 82.08.0297.

82.12.0298 Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state. The provisions of this chapter shall not apply with respect to the use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing

or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 2.]

82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects. The provisions of this chapter shall not apply in respect to the use by artistic or cultural organizations of:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 5.]

"Artistic or cultural organization" defined: RCW 82.04.4328.

82.12.033 Exemption—Use of certain used mobile homes. The tax imposed by RCW 82.12.020 shall not apply in respect to:

- (1) The use of used mobile homes as defined in RCW 82.45.032.
- (2) The use of a mobile home acquired by renting or leasing if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of the mobile home is not conducted jointly with the provision of short-term lodging for transients. [1986 c 211 § 3; 1979 ex.s. c 266 § 4.]

82.12.034 Exemption—Use of used floating homes. The provisions of this chapter shall not apply with respect to the use of used floating homes, as defined in RCW 82.45.032. [1984 c 192 § 4.]

82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used. A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property in Washington. [1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

82.12.036 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.12.037 Credits and refunds—Debts deductible as worthless. A seller is entitled to a credit or refund for use taxes previously paid on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 36.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.12.040 Retailers to collect tax—Penalty. (1) Every person who maintains in this state a place of

business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales, or making transfers of either possession or title or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall nevertheless, be personally liable to the state for the amount of such tax.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor. [1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040. Prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-37; prior: 1935 c 180 § 33.]

Effective date—1986 c 48: "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance. In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of

each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances: (1) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer; (2) where the application is for the renewal of registration; (3) where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or (4) where the applicant presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by him on the vehicle in question. The term "motor vehicle," as used in this section means and includes all motor vehicles, trailers and semitrailers used, or of a type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads, facilities for human habitation, and vehicles carrying exempt licenses. It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon his application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor. Any person willfully misrepresenting, or failing or refusing to declare upon his application, such value shall be guilty of a gross misdemeanor.

Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as his collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within two years after payment of the tax. Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules and regulations as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by

the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer. [1983 c 77 § 2; 1979 c 158 § 222; 1969 ex.s. c 10 § 1; 1963 c 21 § 1; 1961 c 15 § 82.12-.045. Prior: 1951 c 37 § 1.]

82.12.060 Installment sales, leases, bailments. In the case of installment sales and leases of personal property, the department, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

In the case of property acquired by bailment, the department, by regulation, may provide for payment of the tax due in installments based on the reasonable rental for the property as determined under RCW 82.12.010(1). [1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.070 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.080 Administration. The provisions of chapter 82.32 RCW, insofar as applicable, shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.12.080. Prior: 1949 c 228 § 9, part; 1945 c 249 § 8, part; 1943 c 156 § 10, part; 1939 c 225 § 18, part; 1937 c 191 § 4, part; 1935 c 180 § 35, part; Rem. Supp. 1949 § 8470-35, part.]

Chapter 82.14

COUNTIES, CITIES AND METROPOLITAN MUNICIPAL CORPORATIONS—RETAIL SALES AND USE TAXES

Sections

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82.14.220	Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210.
82.14.900	Severability—1970 ex.s. c 94.

82.14.010 Legislative finding—Purpose. The legislature finds that the several counties and cities of the state lack adequate sources of revenue to carry out essential county and municipal purposes. The legislature further finds that the most efficient and appropriate methods of deriving revenues for such purposes is to vest additional taxing powers in the governing bodies of counties and cities which they may or may not implement. The legislature intends, by enacting this chapter, to provide the means by which essential county and municipal purposes can be financially served should they choose to employ them. [1970 ex.s. c 94 § 1.]

82.14.020 Definitions—Where retail sale occurs. For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04-.065, other than a sale of tangible personal property

under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(6) "City" means a city or town;

(7) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(8) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: *Provided, however*, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(9) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

82.14.030 Sales and use taxes authorized—Additional taxes authorized—Maximum rates. (1) The governing body of any county or city while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose a sales and use tax in accordance with the terms of this chapter. Such tax shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city as the case may be. The rate of such tax imposed by a county shall be five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax imposed by a city shall not exceed five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): *Provided, however*, That in the event a county shall impose a sales and use tax under this subsection, the rate of such tax imposed under this subsection by any city therein shall not exceed four hundred and twenty-five one-thousandths of one percent.

(2) Subject to the enactment into law of the 1982 amendment to RCW 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in addition to the tax authorized in subsection (1) of this section, the governing body of any county or city may by resolution or ordinance impose an additional sales and use tax in accordance with the terms of this chapter. Such additional tax shall be collected upon the same taxable events upon which the tax imposed under subsection (1) of this section is levied. The rate of such additional tax imposed by a county shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the

article used (in the case of a use tax). The rate of such additional tax imposed by a city shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): *Provided however*, That in the event a county shall impose a sales and use tax under this subsection at a rate equal to or greater than the rate imposed under this subsection by a city within the county, the county shall receive fifteen percent of the city tax: *Provided further*, That in the event that the county shall impose a sales and use tax under this subsection at a rate which is less than the rate imposed under this subsection by a city within the county, the county shall receive that amount of revenues from the city tax equal to fifteen percent of the rate of tax imposed by the county under this subsection. The authority to impose a tax under this subsection is intended in part to compensate local government for any losses from the phase-out of the property tax on business inventories. [1982 1st ex.s. c 49 § 17; 1970 ex.s. c 94 § 4.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Imposition of additional tax on sale of real property in lieu of tax under RCW 82.14.030(2): RCW 82.46.010(2).

82.14.036 Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method. Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.14.030(2) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29.13.010 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or altering the rate under RCW 82.14.030(2) to a referendum vote.

Any county or city tax authorized under RCW 82.14.030(2) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [1983 c 99 § 2.]

Severability—1983 c 99: See note following RCW 82.14.200.

82.14.040 County ordinance to contain credit provision. (1) Any county ordinance adopted under RCW 82.14.030(1) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(1) for the full amount of any city sales or use tax imposed under RCW 82.14.030(1) upon the same taxable event.

(2) Any county ordinance adopted under RCW 82.14.030(2) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(2) for the full amount of any city sales or use tax imposed under RCW 82.14.030(2) upon the same taxable event up to the additional tax imposed by the county under RCW 82.14.030(2). [1982 1st ex.s. c 49 § 18; 1970 ex.s. c 94 § 5.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.045 Sales and use taxes for public transportation systems. (1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a class AA county pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems and in lieu of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation and if approved by a majority of persons voting thereon, fix and impose a sales and use tax in accordance with the terms of this chapter: *Provided*, That no such legislative body shall impose such a sales and use tax without submitting such an authorizing proposition to the voters and obtaining the approval of a majority of persons voting thereon: *Provided further*, That where such a proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which

a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without additional approval of the voters of such county as otherwise required by this section.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, or six-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2) (a) In the event a metropolitan municipal corporation shall impose a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to levy and/or collect taxes pursuant to RCW 35.58.273, 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(c) In the event a public transportation benefit area shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(3) Any local sales and use tax revenue collected pursuant to this section by any city or by any county for transportation purposes pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally generated tax revenues for the purposes of apportionment and distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized pursuant to RCW 35.58.273. [1984 c 112 § 1; 1983 c 3 § 216; 1980 c 163 § 1; 1975 1st ex.s. c 270 § 6; 1971 ex.s. c 296 § 2.]

Reviser's note: This section was amended by 1983 c 3 § 216 and by 1984 c 112 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Legislative finding, declaration—1971 ex.s. c 296: "The legislature finds that adequate public transportation systems are necessary to the economic, industrial and cultural development of the urban areas of this state and the health, welfare and prosperity of persons who reside or are employed in such areas or who engage in business therein and such systems are increasingly essential to the functioning of the urban highways of the state. The legislature further finds and declares that fares and tolls for the use of public transportation systems cannot maintain such systems in solvent financial conditions and at the same time meet the need to serve those who cannot reasonably afford or use other forms of transportation. The legislature further finds and declares that additional and alternate means of financing adequate public transportation service are necessary for the cities, metropolitan municipal corporations and counties of this state which provide such service." [1971 ex.s. c 296 § 1.]

Severability—1971 ex.s. c 296: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 296 § 5.]

82.14.050 Administration and collection—Local sales and use tax account. The counties, metropolitan municipal corporations and cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, metropolitan municipal corporations, and cities imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. [1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.060 Distributions to counties, cities and metropolitan municipal corporations—Imposition at excess rates, effect. Bimonthly the state treasurer shall make distribution from the local sales and use tax account to the counties, metropolitan municipal corporations and cities the amount of tax collected on behalf of each county, metropolitan municipal corporation or city, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.070 Consistency and uniformity with other taxes—Rules—Ordinances—Effective dates. It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be as consistent and uniform as possible with the state sales and use tax and with other local sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. No resolution or ordinance or any amendment thereto adopted pursuant to this chapter shall be effective, except upon the first day of a calendar month. [1970 ex.s. c 94 § 10.]

82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects. The taxes provided by this chapter may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: *Provided*, That the taxpayer may with the concurrence of the legislative authority designate a particular fund of such county or city against which such prepayment of tax or assessment is made. Such prepayment of taxes or assessments shall not be considered to be a debt for the purpose of the limitation of indebtedness imposed by law on a county or city.

By agreement made pursuant to chapter 39.34 RCW, counties or cities may utilize tax revenues received under the authority of this chapter in connection with large construction projects, including energy facilities as defined in RCW 80.50.020, for any purpose within their power or powers, privileges or authority exercised or capable of exercise by such counties or cities including, but not limited to, the purpose of the mitigation of socioeconomic impacts that may be caused by such large construction projects: *Provided*, That the taxable event need

not take place within the jurisdiction where the socioeconomic impact occurs if an intergovernmental agreement provides for redistribution. [1982 c 211 § 2.]

82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted. When permitted by resolution or ordinance, any tax authorized by this chapter may be paid prior to the taxable event to which it may be attributable. Such prepayment shall be made by deposit with the treasurer or other legal depository for the benefit of the funds to which they belong. They shall be credited by any county or city against any future tax that may become due from a taxpayer: *Provided*, That the taxpayer with the concurrence of the legislative authority may designate a particular fund of such county or city against which such prepayment of tax is made. Prepayment of taxes under this section shall not relieve any taxpayer from remitting the full amount of any tax imposed under the authority of this chapter upon the occurrence of the taxable event. [1982 c 211 § 3.]

82.14.200 County sales and use tax equalization account—Allocation procedure—Earnings. There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in RCW 82.44.150(2). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for the unincorporated area of each county and the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1,

1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment. Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county

must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under this section in any calendar year shall not exceed an amount equal to seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be credited and transferred to the state general fund.

(9) All earnings of investments of balances in the county sales and use tax equalization account shall be credited to the general fund. [1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Rules—1984 c 225: See note following RCW 82.14.210.

Severability—1983 c 99: "If any provision of this act or chapter 49, Laws of 1982 1st ex. sess. or their application to any person or circumstance is held invalid, the remainder of these acts or the application of the provision to other persons or circumstances is not affected." [1983 c 99 § 10.]

Intent—**Construction**—**Effective date**—**Fire district funding**—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.210 Municipal sales and use tax equalization account—Allocation procedure—Earnings. There is created in the state treasury a special account to be known as the "municipal sales and use tax equalization account." Into this account shall be placed such revenues as are provided under RCW 82.44.150(3)(b). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for each city and the state-wide weighted average per capita level of revenues for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each city not imposing the sales and use tax under RCW 82.14.030(2) an amount

from the municipal sales and use tax equalization account equal to the amount distributed to the city under RCW 82.44.150(3)(a) multiplied by thirty-five sixty-fifths.

(3) Subsequent to the distributions under subsection (2) of this section, and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for all cities as determined by the department of revenue under subsection (1) of this section, an amount from the municipal sales and use tax equalization account sufficient, when added to the per capita level of revenues received the previous calendar year by the city, to equal seventy percent of the state-wide weighted average per capita level of revenues for all cities determined under subsection (1) of this section, subject to reduction under subsection (5) of this section.

(4) Subsequent to the distributions under subsection (3) of this section, and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a third distribution from the municipal sales and use tax equalization account. The distribution to each qualifying city shall be equal to the distribution to the city under subsection (3) of this section, subject to the reduction under subsection (5) of this section. To qualify for the distributions under this subsection, the city must impose the tax under RCW 82.14.030(2) for the entire calendar year. Cities imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3) or (4) of this section, then the distributions under subsection (3) or (4) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3) and (4) of this section to the cities.

(6) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (4) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: *Provided*, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section.

(7) For a city or town initially incorporated on or after January 1, 1983, at the time distributions are made under subsection (3) of this section, the state treasurer shall place into a separate designated account for such

city or town a pro rata amount of the revenues received under RCW 82.44.150(3)(b) equal to the city's or town's population multiplied by the amount of equalization funds to which the city or town would be entitled if its per capita yield the previous calendar year were zero. Such account shall take effect on January 1st of the first full calendar year during which the city or town imposes the taxes authorized by RCW 82.14.030(1) and shall cease to exist on December 31st of that year.

(8) All earnings of investments of balances in the municipal sales and use tax equalization account shall be credited to the general fund.

At the time that sales and use tax distributions are made pursuant to RCW 82.14.060, the revenues in such designated account shall be added to the city's or town's sales and use tax distributions so as to provide to such city or town an amount which reflects what such jurisdiction's entitlement from the municipal sales and use tax equalization account would have been if the actual distributions of sales and use tax revenues to such city or town had been received the previous full calendar year. Any excess revenues remaining in such designated account upon its expiration shall be apportioned according to subsection (6) of this section. If the department of revenue determines during the year that any funds in the designated account are not necessary for the purposes of distribution under this subsection, the department may deposit those funds in the municipal sales and use tax equalization account to be apportioned according to subsection (6) of this section. [1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Intent—1984 c 225: "It is the intent of the legislature to provide for the allocation of moneys by the department of revenue from the municipal sales and use tax equalization account to cities and towns initially incorporated on or after January 1, 1983." [1984 c 225 § 1.]

Applicability—1984 c 225: "Sections 1 and 2 of this act apply to distributions for calendar year 1984 and thereafter which are made to cities and towns that were initially incorporated on or after January 1, 1983, and that impose the tax authorized by RCW 82.14.030(1)." [1984 c 225 § 3.] "Sections 1 and 2 of this act" consist of the intent section footnoted above and the 1984 c 225 amendment to RCW 82.14.210.

Rules—1984 c 225: "The department of revenue shall adopt rules as necessary to implement this act." [1984 c 225 § 7.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210. The apportionments and distributions by the state treasurer under RCW 82.14.200 and 82.14.210 shall be based on figures supplied by the department of revenue. [1984 c 225 § 4.]

Rules—1984 c 225: See note following RCW 82.14.210.

82.14.900 Severability—1970 ex.s. c 94. No determination that one or more provisions of this 1970 amendatory act, or any part thereof, are invalid shall affect the validity of the remaining provisions. [1970 ex.s. c 94 § 9.]

Chapter 82.14A

CITIES AND TOWNS—LICENSE FEES AND TAXES ON FINANCIAL INSTITUTIONS

Sections

- 82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates.
 82.14A.020 Division of gross income of business between cities, towns and unincorporated areas.
 82.14A.030 Effective date of resolutions or ordinances.
 82.14A.900 Effective date—1972 ex.s. c 134.

82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates. The governing body of any city or town which imposes a license fee or tax, by ordinance or resolution, may pursuant to RCW 82.14A.010 through 82.14A.030 only, fix and impose a license fee or tax on national banks, state banks, trust companies, mutual savings banks, building and loan associations, savings and loan associations, and other financial institutions for the act or privilege of engaging in business: *Provided*, That the definitions, deductions and exemptions set forth in chapter 82.04 RCW, insofar as they shall be applicable shall be applied to a license fee or tax imposed by any city or town, if such fee or tax is measured by the gross income of the business: *Provided, further*, That the rate of such license fee or tax shall not exceed the rate imposed upon other service type business activity: *And provided further*, That nothing in RCW 82.14A.010 through 82.14A.030 shall extend the regulatory power of any city or town. [1972 ex.s. c 134 § 2.]

82.14A.020 Division of gross income of business between cities, towns and unincorporated areas. For purposes of RCW 82.14A.010, the state department of revenue is hereby authorized and directed to promulgate, pursuant to the provisions of chapter 34.04 RCW, rules establishing uniform methods of division of gross income of the business of a single taxpayer between those cities, towns and unincorporated areas in which such taxpayer has a place of business. [1972 ex.s. c 134 § 3.]

82.14A.030 Effective date of resolutions or ordinances. No resolution or ordinance or any amendment thereto adopted pursuant to RCW 82.14A.010 shall be effective, except on the first day of a calendar month. [1972 ex.s. c 134 § 5.]

82.14A.900 Effective date—1972 ex.s. c 134. Sections 2 through 5 of this 1972 amendatory act shall take effect July 1, 1972. [1972 ex.s. c 134 § 8.]

Reviser's note: Sections 2 through 5 of 1972 ex.s. c 134 consist of the enactment of RCW 82.14A.010, 82.14A.020, and 82.14A.030 and the 1972 ex.s. c 134 amendment to RCW 33.28.040.

Chapter 82.14B
COUNTIES—TAX ON TELEPHONE ACCESS
LINE USE

Sections

- 82.14B.010 Findings.
 82.14B.020 Definitions.
 82.14B.030 Excise tax on use of telephone access lines authorized—Amount—Approval by electorate.
 82.14B.040 Collection of tax by telephone company required.
 82.14B.050 Use of proceeds.
 82.14B.060 Administration and collection.
 82.14B.070 Emergency service communication districts—Authorized.
 82.14B.080 Emergency service communication districts—Hearing—Election.
 82.14B.090 Emergency service communication districts—Emergency service communication system—Financing—Excise tax.
 82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060—Ballot proposition authorizing excise tax.
 82.14B.900 Severability—1981 c 160.

82.14B.010 Findings. The legislature finds that counties should be provided with an additional revenue source to fund emergency service communication systems on a county-wide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to vest the legislative authorities of the counties, subject to voter approval, with the power to impose an excise tax on the use of telephone access lines. [1981 c 160 § 1.]

82.14B.020 Definitions. As used in this chapter:

- (1) "Emergency services communication system" means a county-wide radio or landline communications network, 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.
- (2) "Telephone access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the telephone company's switching office.
- (3) "Telephone company" has the meaning ascribed to it in RCW 80.04.010. [1981 c 160 § 2.]

82.14B.030 Excise tax on use of telephone access lines authorized—Amount—Approval by electorate. The legislative authority of a county may impose an excise tax on the use of telephone access lines in an amount not exceeding fifty cents per month for each telephone access line. The amount of tax shall be uniform for each telephone access line. This tax must be approved by a favorable vote of at least three-fifths of the electors thereof voting on the proposition, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in the county at the last preceding general election when the number of electors voting on the proposition does not exceed forty per centum of the total votes cast in the county in the last preceding general election; or by a majority of at least three-fifths of the electors thereof

voting on the proposition when the number of electors voting on the proposition exceeds forty per centum of the total votes cast in the county in the last preceding general election. This tax may be imposed for six years without subsequent voter approval. At any election held under this section, the ballot title of the proposition shall state the maximum monthly rate of the proposed tax which may be imposed by the county legislative authority. The actual rate of tax to be imposed shall be set by ordinance, which rate shall not exceed the maximum monthly rate approved by the electors.

No tax may be imposed under this section for more than one year before the expected implementation date of an emergency services communication system. The power granted under this section is in addition to any other authority which counties have to fund emergency services communication systems. [1981 c 160 § 3.]

82.14B.040 Collection of tax by telephone company required. A county imposing a tax under this chapter shall require collection of the tax from the user by the telephone company providing the access line. The telephone company shall state the amount of the tax separately on the billing statement which is sent to the user. [1981 c 160 § 4.]

82.14B.050 Use of proceeds. The proceeds of any tax collected under this chapter shall be used by the county only for the emergency services communication system. [1981 c 160 § 5.]

82.14B.060 Administration and collection. A county legislative authority imposing a tax under this chapter shall establish by ordinance all necessary and appropriate procedures for the administration and collection of the tax, which ordinance shall provide for reimbursement to the telephone companies for actual costs of administration and collection of the tax imposed. The ordinance shall also provide that the due date for remittance of the tax collected shall be thirty days following the collection month. [1981 c 160 § 6.]

82.14B.070 Emergency service communication districts—Authorized. In lieu of providing a county-wide system of emergency service communication, the legislative authority of a county may establish one or more less than county-wide emergency service communication districts within the county for the purpose of providing and funding emergency service communication systems. An emergency service communication district is a quasi-municipal corporation, shall constitute a body corporate, and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

The county legislative authority shall be the governing body of an emergency service communication district. The county treasurer shall act as the ex officio treasurer of the emergency services communication district. The

electors of an emergency service communication district are all registered voters residing within the district. [1987 c 17 § 1.]

82.14B.080 Emergency service communication districts—Hearing—Election. (1) A county legislative authority proposing to establish an emergency service communication district, or to modify the boundaries of an existing emergency service communication district, or to dissolve an existing emergency service communication district, shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the emergency service communication district, or proposed emergency service communication district. This notice shall be in addition to any other notice required by law to be published. Additional notice of the hearing may be given by mail, posting within the proposed emergency service communication district, or in any manner the county legislative authority deems necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the emergency service communication district.

(2) Following the hearing held pursuant to subsection (1) of this section, the county legislative authority may call a special election on one of the dates specified in RCW 29.13.020, and submit a ballot proposition to establish the emergency service communication district, modify the boundaries of the emergency service communication district, or dissolve the emergency service communication district, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. A ballot proposition to establish an emergency service communication district shall be submitted to the voters of the proposed district. A ballot proposition to modify the boundaries of an emergency service communication district shall be submitted to the voters resident in the area to be annexed to, or deannexed from, the district. A ballot proposition to dissolve an emergency service communication district shall be submitted to the voters of the district. Approval shall be by a simple majority vote. [1987 c 17 § 2.]

82.14B.090 Emergency service communication districts—Emergency service communication system—Financing—Excise tax. An emergency service communication district is authorized to finance and provide an emergency service communication system and, if authorized by the voters, to finance the system by imposing the excise tax authorized in RCW 82.14B.030. [1987 c 17 § 3.]

82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060—Ballot proposition authorizing excise tax. RCW 82.14B.040 through 82.14B.060 apply to any emergency service communication district established under RCW 82.14B.070 through 82.14B.090. A ballot proposition to authorize the excise tax authorized under

RCW 82.14B.040 through 82.14B.060 may be submitted to the voters of a proposed emergency service communication district at the same election the ballot proposition creating the district is submitted. The authority to impose the tax shall only exist if both of these ballot propositions are approved. [1987 c 17 § 4.]

82.14B.900 Severability—1981 c 160. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 160 § 7.]

Chapter 82.16

PUBLIC UTILITY TAX

Sections	
82.16.010	Definitions.
82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys.
82.16.030	Taxable under each schedule if within its purview.
82.16.040	Exemption.
82.16.043	Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities from chapter 82.16 RCW.
82.16.045	Exemptions and credits—Pollution control facilities.
82.16.047	Exemptions—Ride sharing.
82.16.050	Deductions in computing tax.
82.16.055	Deductions relating to energy conservation or production from renewable resources.
82.16.060	May be taxed under other chapters.
82.16.080	Administration.

Public utility districts, privilege tax: Chapter 54.28 RCW.

82.16.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: *Provided*, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses: *Provided*, That gross income of a light and power business means those amounts or value accruing to a taxpayer from the last distribution of electrical energy which is a taxable event within this state.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010. Prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Severability—1981 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.16.020 Public utility tax imposed—**Additional tax imposed**—**Deposit of moneys.** (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Railroad, express, railroad car, sewerage collection, light and power, and telegraph businesses: Three and six-tenths percent;

(b) Gas distribution business: Three and six-tenths percent;

(c) Urban transportation business: Six-tenths of one percent;

(d) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(e) Motor transportation and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(f) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050. [1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Severability—1986 c 282: See RCW 82.18.900.

Severability—**Effective date**—1985 c 471: See notes following RCW 82.04.260.

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 5 § 2.]

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.16.030 Taxable under each schedule if within its purview. Every person engaging in businesses which are within the purview of two or more of schedules (a), (b), (c), (d), and (e) of RCW 82.16.020(1), shall be taxable under each schedule applicable to the businesses engaged in. [1982 1st ex.s. c 35 § 6; 1961 c 15 § 82.16.030. Prior: 1935 c 180 § 38; RRS § 8370-38.]

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.16.040 Exemption. The provisions of this chapter shall not apply to persons engaging in one or more businesses taxable under this chapter whose total gross income is less than five hundred dollars for a monthly period or portion thereof. Any person claiming exemption under this section may be required to file returns even though no tax may be due. If the total gross income for a taxable monthly period is five hundred dollars, or more, no exemption or deductions from the gross operating revenue is allowed by this provision. [1961 c 15 § 82.16.040. Prior: 1959 ex.s. c 3 § 17; 1959 c 197 § 27; 1935 c 180 § 39; RRS § 8370-39.]

82.16.043 Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities from chapter 82.16 RCW. See RCW 82.04.417.

82.16.045 Exemptions and credits—Pollution control facilities. See chapter 82.34 RCW.

82.16.047 Exemptions—Ride sharing. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010. [1979 c 111 § 18.]

Severability—1979 c 111: See note following RCW 46.74.010.

82.16.050 Deductions in computing tax. In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: *Provided*, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity, other than electrical energy, in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of credit losses actually sustained by taxpayers whose regular books of accounts are kept upon an accrual basis;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening

transportation, by vessel, in their original form, to interstate or foreign destinations: *Provided*, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(9) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(10) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage. [1987 c 207 § 1; 1982 2nd ex.s. c 9 § 3; 1977 ex.s. c 368 § 1; 1967 ex.s. c 149 § 25; 1965 ex.s. c 173 § 22; 1961 c 15 § 82.16.050. Prior: 1959 ex.s. c 3 § 18; 1949 c 228 § 11; 1937 c 227 § 12; 1935 c 180 § 40; Rem. Supp. 1949 § 8370-40.]

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

82.16.055 Deductions relating to energy conservation or production from renewable resources. (1) In computing tax under this chapter there shall be deducted from the gross income:

(a) An amount equal to the cost of production at the plant for consumption within the state of Washington of:

(i) Electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(ii) Electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat; and

(b) Those amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer.

(2) This section applies only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end use on which construction or installation is begun after June 12, 1980, and before January 1, 1990.

(3) Deductions under subsection (1)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(4) Measures or projects encouraged under this section shall at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(5) The department of revenue, after consultation with the utilities and transportation commission in the case of investor-owned utilities and the governing bodies of locally regulated utilities, shall determine the eligibility of individual projects and measures for deductions under this section. [1980 c 149 § 3.]

Legislative finding—1980 c 149: See RCW 80.28.024.

Utility rate structures encouraging energy conservation and production from renewable resources: RCW 80.28.025.

82.16.060 May be taxed under other chapters. Nothing herein shall be construed to exempt persons taxable under the provisions of this chapter from tax under any other chapters of this title with respect to activities other than those specifically within the provisions of this chapter. [1961 c 15 § 82.16.060. Prior: 1935 c 180 § 41; RRS § 8370-41.]

82.16.080 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.16.080. Prior: 1935 c 180 § 43; RRS § 8370-43.]

Chapter 82.18

REFUSE COLLECTION TAX

Sections

82.18.010	Definitions.
82.18.020	Tax imposed.
82.18.030	Collection of tax.
82.18.040	Collection of tax—Payment to state.
82.18.050	Federal government exempt from tax.
82.18.060	No multiple taxation of single transaction.
82.18.070	Applicability of general administrative provisions.
82.18.080	Enforcement.
82.18.900	Severability—1986 c 282.

82.18.010 Definitions. For purposes of this chapter:

(1) "Refuse collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(2) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(3) "Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(4) "Taxpayer" means that person upon whom the refuse collection tax is imposed. [1986 c 282 § 6.]

82.18.020 Tax imposed. There is imposed on each person using the services of a refuse collection business a refuse collection tax equal to three and six-tenths percent of the consideration charged for the services. [1986 c 282 § 7.]

82.18.030 Collection of tax. The person collecting the charges made for using the refuse collection business shall collect the tax imposed in *section 6 of this act. If any person charged with collecting the tax fails to bill the taxpayer for the tax, or in the alternative has not notified the taxpayer in writing of the imposition of the tax, or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own

acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax. [1986 c 282 § 8.]

***Reviser's note:** "Section 6 of this act" is codified as RCW 82.18.010, a definition section. RCW 82.18.020, which imposes the tax, was apparently intended.

82.18.040 Collection of tax—Payment to state. Taxes collected under this chapter shall be held in trust until paid to the state. Taxes so received by the state shall be deposited in the public works assistance account created in RCW 43.155.050. Any person collecting the tax who appropriates or converts the tax collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

The tax shall be due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

The tax shall be due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted shall be applied first to payment of the refuse collection tax and this tax shall have priority over all other claims to the amount remitted. [1986 c 282 § 9.]

82.18.050 Federal government exempt from tax. The refuse collection tax shall not apply to any agency, division, or branch of the federal government or to services rendered under a contract therewith. [1986 c 282 § 10.]

82.18.060 No multiple taxation of single transaction. To prevent pyramiding and multiple taxation of a single transaction, this tax shall not apply to any refuse collection business using the services of another refuse collection business for the transfer, storage, or disposal of the waste collected during the transaction.

To be eligible for this exemption, a person first must be certified by the department of revenue as a refuse collection business. [1986 c 282 § 11.]

82.18.070 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the tax imposed under this chapter. [1986 c 282 § 12.]

82.18.080 Enforcement. The department of revenue shall have the power to enforce the tax imposed in this chapter through appropriate rules. [1986 c 282 § 13.]

82.18.900 Severability—1986 c 282. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 282 § 22.]

Chapter 82.22

HAZARDOUS SUBSTANCE TAX

Sections

82.22.010	Intent.
82.22.020	Definitions.
82.22.030	Hazardous substance tax imposed—Deposit of monies—Administrative provisions.
82.22.040	Exemptions.
82.22.050	Credits.

82.22.010 Intent. It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. This chapter is not intended to exempt any person from tax liability under any other law. [1987 3rd ex.s. c 2 § 44.]

Effective date—1987 3rd ex.s. c 2 §§ 44-48: "Sections 44 through 48 of this act shall take effect on January 1, 1988. The department of revenue may immediately take such steps as may be necessary to ensure that the tax imposed under sections 44 through 48 of this act is implemented on its effective date." [1987 3rd ex.s. c 2 § 62.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

82.22.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hazardous substance" means:

(a) Any substance that, on January 1, 1988, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499;

(b) Petroleum products;

(c) Any pesticide product required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items containing both: (i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and (ii) one or more substances that are not hazardous substances.

Until April 1, 1988, "hazardous substance" does not include substances or products packaged as a household product and distributed for domestic use.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means the price paid by a wholesaler or retailer to a manufacturer or the price paid by a retailer to a wholesaler when the price represents the value at the time of first possession in Washington state. In cases where no sales transaction has occurred, "wholesale value" means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1987 3rd ex.s. c 2 § 45.]

Effective date—1987 3rd ex.s. c 2 §§ 44-48: See note following RCW 82.22.010.

Severability—**Continuation of act**—**Section captions**—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—**Savings**—**Retroactivity**—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

82.22.030 Hazardous substance tax imposed—Deposit of moneys—Administrative provisions. (1) A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax shall be eight-tenths of one percent multiplied by the wholesale value of the substance.

(2) Moneys collected under this chapter shall be deposited in the toxics control accounts under RCW 70.105B.220.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. The department may adopt rules to ensure that taxes imposed on retailers are imposed equally as a tax imposed on first possessors who are not retailers. The rules may provide that the tax be imposed based on a percentage of sales for any class of retailer. [1987 3rd ex.s. c 2 § 46.]

Effective date—1987 3rd ex.s. c 2 §§ 44-48: See note following RCW 82.22.010.

Severability—**Continuation of act**—**Section captions**—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—**Savings**—**Retroactivity**—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

82.22.040 Exemptions. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid constitutes a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of (a) alumina, (b) natural gas, (c) petroleum coke, (d) liquid fuel or fuel gas used in petroleum processing, or (e) petroleum products that are exported for use or sale outside this state as fuel.

(4) Persons or activities that the state is prohibited from taxing under the United States Constitution.

(5) Any persons possessing a hazardous substance where the possession first occurred before January 1, 1988. [1987 3rd ex.s. c 2 § 47.]

Effective date—1987 3rd ex.s. c 2 §§ 44-48: See note following RCW 82.22.010.

Severability—**Continuation of act**—**Section captions**—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—**Savings**—**Retroactivity**—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

82.22.050 Credits. (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) That is imposed on the act or privilege of possessing hazardous substances, and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof. [1987 3rd ex.s. c 2 § 48.]

Effective date—1987 3rd ex.s. c 2 §§ 44–48: See note following RCW 82.22.010.

Severability—**Continuation of act**—**Section captions**—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—**Savings**—**Retroactivity**—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

Chapter 82.24 TAX ON CIGARETTES

Sections	
82.24.010	Definitions.
82.24.020	Tax imposed—Absorption of tax—Possession defined.
82.24.027	Additional tax imposed—Rate—Deposit in water quality account.
82.24.030	Stamps to be affixed—Meter machines authorized.
82.24.040	Duty of wholesaler.
82.24.050	Duty of retailer.
82.24.060	Stamps—How affixed.
82.24.070	Compensation of dealers.
82.24.080	Legislative intent.
82.24.090	Records to be preserved—Reports.
82.24.100	Forgery or counterfeiting of stamps—Penalty.
82.24.110	Other offenses—Penalties.
82.24.120	Violations—Penalties and interest.
82.24.130	Seizure and forfeiture.
82.24.135	Forfeiture procedure.
82.24.140	Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.
82.24.145	Forfeited property—Retention or sale—Use of sale proceeds.
82.24.180	Seized property may be returned.
82.24.190	Search and seizure.
82.24.210	Redemption of stamps.
82.24.230	Administration.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposing of unstamped cigarettes—Retailer to collect and remit tax—Liability.
82.24.500	Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty.
82.24.510	Wholesaler's and retailer's licenses—Application and issuance.
82.24.520	Wholesaler's license—Fee—Display of license—Bond.
82.24.530	Retailer's license—Fee.
82.24.540	Licensee to operate within scope of license—Penalty.
82.24.550	Enforcement—Notice—Hearing—Reinstatement of license—Appeal.
82.24.560	Fees and penalties credited to general fund.
82.24.900	Construction—1961 c 15.

Cigarette vending machine license fee: RCW 19.91.150.

82.24.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only;

(2) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales,

and all persons operating under a retailer's registration certificate;

(3) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state;

(4) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state;

(5) "Stamp" means the stamp or stamps or meter impressions by use of which the tax levy under this chapter is paid;

(6) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" shall apply equally in the provisions of this chapter. [1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370–83.]

82.24.020 Tax imposed—Absorption of tax—Possession defined. (1) There is levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of eleven and one-half mills per cigarette.

(2) Wholesalers and retailers subject to the payment of this tax may, if they wish, absorb one-half mill per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(3) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his designee by a person other than the purchaser, constructive possession by the purchaser or his designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held. [1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020. Prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370–82, part.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Severability—1972 ex.s. c 157: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 157 § 8.]

82.24.027 Additional tax imposed—Rate—Deposit in water quality account. There is hereby levied and there shall be collected by the department of revenue

from the persons mentioned in and in the manner provided by this chapter, an additional tax upon the sale, use, consumption, handling, possession, or distribution of cigarettes in an amount equal to the rate of four mills per cigarette.

The moneys collected under this section shall be deposited in the water quality account under RCW 70.146.030 through June 30, 2021, and in the general fund thereafter. [1986 c 3 § 12.]

Effective dates—1986 c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except sections 12 through 15 of this act shall take effect April 1, 1986." [1986 c 3 § 18.] "Sections 12 through 15 of this act" consist of the enactment of RCW 82.24.027, 82.26.025, and 82.32.390 and the amendment of RCW 82.24.260 by 1986 c 3. The remainder of this act, codified in RCW 70.146.010 through 70.146.080, took effect February 21, 1986.

Severability—1986 c 3: See RCW 70.146.900.

82.24.030 Stamps to be affixed—Meter machines authorized. In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department, such stamps to be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid. Every person shall cause to be affixed on every package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon before he sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: *Provided*, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

The department may authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this chapter, and if such use is authorized, shall provide reasonable rules and regulations with respect thereto. [1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.040 Duty of wholesaler. Every wholesaler in this state shall, within a reasonable time after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: *Provided*, That any wholesaler who furnishes surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of his stock as may be necessary for the

conduct of his business in making sales to persons in another state or foreign country, to instrumentalities of the federal government, or to the established governing bodies of any Indian tribe, recognized as such by the United States Department of the Interior. Such unstamped stock shall be kept separate and apart from stamped stock: *Provided further*, That every wholesaler shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state, or to a federal instrumentality, or to an Indian tribal organization, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the main office of the department, at Olympia, not later than the fifteenth day of the following calendar month, and for failure to comply with the requirements of this section the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed. The department may also revoke this permission to maintain a stock of unstamped goods for sale to a specific Indian tribal organization when it appears that sales of unstamped cigarettes to persons who are not enrolled members of a recognized Indian tribe are taking place, or have taken place, within the exterior boundaries of the reservation occupied by that tribe. [1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.050 Duty of retailer. Every retailer shall, within a reasonable time after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: *Provided*, That those articles to which stamps have been properly affixed by a wholesaler or another retailer may be retained by any retailer, and that those articles intended for sale to qualified purchasers may be retained by federal instrumentalities and Indian tribal organizations, without affixing the stamps required by this chapter. [1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.060 Stamps—How affixed. Stamps shall be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed.

In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps shall be affixed securely on each individual package. [1961 c 15 § 82.24.060. Prior: 1959 c 270 § 6; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.070 Compensation of dealers. Wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps herein required a sum computed at the rate of four dollars per one thousand stamps purchased or affixed by them. [1987 c 496 § 5; 1987 c 80 § 2; 1971 ex.s. c 299 § 14; 1965 ex.s. c 173 § 24; 1961 ex.s. c 24 § 4; 1961 c 15 § 82.24.070. Prior: 1959 c 270 § 7; prior: 1953 c 240 § 2; 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370–82, part.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.24.080 Legislative intent. It is the intent and purpose of this chapter to levy a tax on all of the articles taxed herein, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles herein taxed is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event occurring within this state: *Provided, however,* That failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [1972 ex.s. c 157 § 4; 1961 c 15 § 82.24.080. Prior: 1959 c 270 § 8; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370–82, part.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.090 Records to be preserved—Reports. Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records, showing all transactions had with reference to the purchase and sale of any of the articles taxed herein and such persons shall also keep separately all invoices, and shall keep a record of all stamps purchased, and all such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month, which report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof. [1975 1st ex.s. c 278 § 62; 1961 c 15 § 82.24.090. Prior: 1941 c 178 § 14; 1939 c 225 § 24; 1935 c 180 § 84; Rem. Supp. 1941 § 8370–84.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.100 Forgery or counterfeiting of stamps—Penalty. To forge or counterfeit any stamp of the kind herein provided is a felony. [1961 c 15 § 82.24.100. Prior: 1935 c 180 § 85; RRS § 8370–85.]

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(c) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(d) To violate any of the provisions of this chapter;

(e) To violate any lawful rule or regulation made and published by the department of revenue;

(f) To use any stamps more than once;

(g) To refuse to allow the department of revenue or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(h) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(i) For any person to make, use, or present or exhibit to the department of revenue or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(j) For any wholesaler or retailer or his agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or received in his place of business within five years prior to such demand unless he can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his control;

(k) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(l) For any person to possess or transport upon the public highways, roads, or streets of this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person transporting the cigarettes has in actual possession invoices or delivery tickets therefor which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported and unless the cigarettes are consigned to or purchased

by any person in this state who is a purchaser or consignee authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport upon the public highways, roads, or streets of this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating the provisions thereof. [1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370–86.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.120 Violations—Penalties and interest. If any person, subject to the provisions of this chapter or any rules and regulations promulgated by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules and regulations promulgated by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a penalty equal to the amount of any tax found to be due plus interest thereon at the rate of one percent for each thirty days or portions thereof from the date the tax became due, and upon notice mailed to the last known address of the taxpayer said amount shall become due and payable in ten days, at which time the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes and penalties. The department, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of one percent for each thirty days or portion thereof. The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter. [1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370–87.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.130 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed by the department, pursuant to the provisions of chapter 19.91 RCW for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband. [1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370–88.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.135 Forfeiture procedure. In all cases of seizure of any property made subject to forfeiture under this chapter the department shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department immediately if the seizure is made by someone other than an agent of the department authorized to collect taxes.

(2) Upon notification or seizure by the department or upon receipt of property subject to forfeiture under this chapter from any other person, the department shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or acting as its agent. Listing and appraisal of the property shall be properly attested by the department and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department to be less than one hundred dollars in value.

(3) The department shall cause notice to be served within five days following the seizure or notification to the department of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it shall be by both certified mail with return receipt requested and regular mail. Service by mail shall be deemed complete upon mailing within the five-day period following the seizure or notification of the seizure to the department.

(4) If no person notifies the department in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing before the seizing agency and any appeal therefrom shall be in accordance with chapter 34.04 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized. [1987 c 496 § 3.]

82.24.140 Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.

Reviser's note: RCW 82.24.140 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

82.24.145 Forfeited property—Retention or sale—Use of sale proceeds. When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency. [1987 c 496 § 4.]

82.24.180 Seized property may be returned. The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

When any property is seized, under the provisions of this chapter, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to twenty-five percent of the amount of tax due and interest thereon at the rate of one percent for each thirty days or portion thereof from the date the tax became due, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.190 Search and seizure. When the department of revenue has good reason to believe that any of the articles taxed herein are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter or regulations issued under authority hereof, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department of revenue commanding him or her diligently to search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person in possession or control thereof. If upon the return of such warrant, it

shall appear that any of the articles taxed herein, unlawfully possessed, were seized, the same shall be sold as provided in this chapter. [1987 c 202 § 244; 1975 1st ex.s. c 278 § 67; 1961 c 15 § 82.24.190. Prior: 1949 c 228 § 16; 1935 c 180 § 91; Rem. Supp. 1949 § 8370-91.]

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

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.210 Redemption of stamps. The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. [1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.230 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections thereof: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100 and 82.32.270. [1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect. Every person who shall transport cigarettes not having the stamps affixed to the packages or containers, upon the public highways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported. If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. In the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not authorized by chapter 82.24 RCW to

possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" shall mean a wholesaler or retailer licensed pursuant to the provisions of chapter 19.91 RCW, the United States or an agency thereof, and any Indian tribal organization authorized to possess unstamped cigarettes. [1972 ex.s. c 157 § 6.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.260 Selling or disposing of unstamped cigarettes—Retailer to collect and remit tax—Liability. Any retailer who sells or otherwise disposes of any unstamped cigarettes other than (1) a federal instrumentality with respect to sales to authorized military personnel and (2) a federally recognized Indian tribal organization with respect to sales to enrolled members of the tribe shall collect from the buyer or transferee thereof the tax imposed on such buyer or transferee by this chapter and remit the same to the department after deducting from the tax collected the compensation he would have been entitled to under the provisions of this chapter if he had affixed stamps to the unstamped cigarettes. Such remittance shall be made at the same time and manner as remittances of the retail sales tax as required under chapters 82.08 and 82.32 RCW. In the event the retailer fails to collect the tax from the buyer or transferee, or fails to remit the same, the retailer shall be personally liable therefor, and shall be subject to the administrative provisions of RCW 82.24.230 with respect to the collection thereof by the department. The provisions of this section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

Nothing in this section shall relieve a wholesaler or a retailer from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Severability—1983 c 189: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder

of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 189 § 10.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.500 Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty. (Effective July 1, 1991.) No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a misdemeanor. [1986 c 321 § 4.]

Policy—Intent—1986 c 321: "It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act." [1986 c 321 § 1.]

Savings—1986 c 321: "A cigarette wholesalers or retailers license issued by the department of licensing under RCW 19.91.130 in good standing on the July 1, 1991, constitutes a license under RCW 82.24.500." [1986 c 321 § 11.]

Effective date—1986 c 321: "Sections 1 and 4 through 14 of this act shall take effect on July 1, 1991." [1986 c 321 § 15.]

82.24.510 Wholesaler's and retailer's licenses—Application and issuance. (Effective July 1, 1991.) (1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department of revenue shall adopt rules regarding the regulation of the licenses. The department of revenue may refrain from the issuance of any license under this chapter if the department has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department of revenue made pursuant thereto. [1986 c 321 § 5.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.520 Wholesaler's license—Fee—Display of license—Bond. (Effective July 1, 1991.) A fee of six hundred fifty dollars shall accompany each wholesaler's license application or license renewal application. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue

requires, shall be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a master license. The department of revenue shall require each licensed wholesaler to file with the department a bond in an amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license. [1986 c 321 § 6.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.530 Retailer's license—Fee. (Effective July 1, 1991.) A fee of ten dollars shall accompany each retailer's license application or license renewal application. A fee of one additional dollar for each vending machine shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. [1986 c 321 § 7.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.540 Licensee to operate within scope of license—Penalty. (Effective July 1, 1991.) Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity unless the additional appropriate license or licenses are first secured. A violation of this section is a misdemeanor. [1986 c 321 § 8.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.550 Enforcement—Notice—Hearing—Reinstatement of license—Appeal. (Effective July 1, 1991.) (1) The department of revenue shall enforce the provisions of this chapter. The department of revenue may adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter. The department of revenue has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(2) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department of revenue. The department of revenue, upon a finding by same, that the licensee has failed to comply with any provision of this chapter or any rule promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or plural offender, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department of revenue finds the offender has been guilty of

wilful and persistent violations, it may revoke the license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the department of revenue at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department of revenue if it appears to the satisfaction of the department of revenue that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder.

(4) A person whose license has been suspended or revoked shall not sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(5) Any determination and order by the department of revenue, and any order of suspension or revocation by the department of revenue of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department of revenue and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department of revenue. [1986 c 321 § 9.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.560 Fees and penalties credited to general fund. (Effective July 1, 1991.) All fees and penalties received or collected by the department of revenue pursuant to this chapter shall be paid to the state treasurer, to be credited to the general fund. [1986 c 321 § 10.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.900 Construction—1961 c 15. The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States. [1961 c 15 § 82.24.900. Prior: 1935 c 180 § 94; RRS § 8370-94.]

Chapter 82.26

TAX ON TOBACCO PRODUCTS

Sections	
82.26.010	Definitions.
82.26.020	Tax imposed—Additional tax imposed.
82.26.025	Additional tax imposed—Rate—Deposit in water quality account.
82.26.030	Legislative intent.
82.26.040	When tax not applicable under laws of United States.
82.26.050	Certificate of registration required.
82.26.060	Books and records to be preserved—Entry and inspection by department.
82.26.070	Preservation of invoices of sales to other than ultimate consumer.
82.26.080	Invoices of purchases to be procured by retailer, subjobber—Preservation—Inspection.
82.26.090	Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection.

82.26.100	Reports and returns.
82.26.110	When credit may be obtained for tax paid.
82.26.120	Administration.

82.26.010 Definitions. As used in this chapter:

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010(4);

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever.

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Department" means the state department of revenue. [1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26-.010. Prior: 1959 ex.s. c 5 § 11.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.020 Tax imposed—Additional tax imposed.

(1) From and after June 1, 1971, there is levied and

there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of forty-five percent of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 16; 1982 1st ex.s. c 35 § 9; 1975 1st ex.s. c 278 § 71; 1971 ex.s. c 299 § 77; 1965 ex.s. c 173 § 25; 1961 c 15 § 82.26.020. Prior: 1959 ex.s. c 5 § 12.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.26.025 Additional tax imposed—Rate—Deposit in water quality account. (1) In addition to the taxes imposed under RCW 82.26.020, there is levied and there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of sixteen and three-fourths percent of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(2) The moneys collected under this section shall be deposited in the water quality account under RCW 70.146.030 through June 30, 2021, and in the general fund thereafter. [1986 c 3 § 14.]

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

82.26.030 Legislative intent. It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax only once but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. [1961 c 15 § 82.26.030. Prior: 1959 ex.s. c 5 § 13.]

82.26.040 When tax not applicable under laws of United States. The tax imposed by RCW 82.26.020 shall not apply with respect to any tobacco products which under the Constitution and laws of the United States

may not be made the subject of taxation by this state. [1961 c 15 § 82.26.040. Prior: 1959 ex.s. c 5 § 14.]

82.26.050 Certificate of registration required. From and after July 1, 1959 no person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received from the department of revenue a certificate of registration as provided in RCW 82.32.030. [1975 1st ex.s. c 278 § 72; 1961 c 15 § 82.26.050. Prior: 1959 ex.s. c 5 § 15.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.060 Books and records to be preserved—Entry and inspection by department. Every distributor shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand on July 1, 1959, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products.

When a registered distributor sells tobacco products exclusively to the ultimate consumer at the address given in the certificate, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that registered distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least five years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the department of revenue, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours the department, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate of the distributor at such premises shall be subject to revocation by the department. [1975 1st ex.s. c 278 § 73; 1961 c 15 § 82.26.060. Prior: 1959 ex.s. c 5 § 16.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.070 Preservation of invoices of sales to other than ultimate consumer. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the

seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He shall preserve legible copies of all such invoices for five years from the date of sale. [1961 c 15 § 82.26.070. Prior: 1959 ex.s. c 5 § 17.]

82.26.080 Invoices of purchases to be procured by retailer, subjobber—Preservation—Inspection. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for five years from the date of purchase. Invoices shall be available for inspection by the department of revenue or its authorized agents or employees at the retailer's or subjobber's place of business. [1975 1st ex.s. c 278 § 74; 1961 c 15 § 82.26.080. Prior: 1959 ex.s. c 5 § 18.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.090 Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the department of revenue for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the department may require. These records shall be preserved for five years from the date of delivery of the tobacco products. [1975 1st ex.s. c 278 § 75; 1961 c 15 § 82.26.090. Prior: 1959 ex.s. c 5 § 19.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.100 Reports and returns. Every distributor shall report and make returns as provided in RCW 82.32.045. Every registered distributor outside of this state shall in like manner report and make returns. [1983 c 3 § 218; 1961 c 15 § 82.26.100. Prior: 1959 ex.s. c 5 § 20.]

82.26.110 When credit may be obtained for tax paid. Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to retailers without the state, to be sold by those retailers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with regulations prescribed by the department of revenue. [1975 1st ex.s. c 278 § 76; 1961 c 15 § 82.26.110. Prior: 1959 ex.s. c 5 § 21.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.120 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1963 ex.s. c 28 § 5.]

Effective date—1963 ex.s. c 28: See note following RCW 82.04.030.

Chapter 82.27

TAX ON ENHANCED FOOD FISH

Sections	
82.27.010	Definitions.
82.27.020	Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.
82.27.030	Exemptions.
82.27.040	Credit for taxes paid to another taxing authority.
82.27.050	Application of excise taxes' administrative provisions and definitions.
82.27.060	Payment of tax—Remittance—Returns.
82.27.070	Deposit of taxes.
82.27.900	Effective date—Implementation—1980 c 98.
82.27.901	Severability—1985 c 413.

82.27.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Enhanced food fish" includes all species of food fish, shellfish, and anadromous game fish, including by-products and parts thereof, originating within the territorial and adjacent waters of Washington and salmon originating from within the territorial and adjacent waters of Oregon, Washington, and British Columbia, and all troll-caught Chinook salmon originating from within the territorial and adjacent waters of southeast Alaska. As used in this subsection, "adjacent" waters of Oregon, Washington, and Alaska are those comprising the United States fish conservation zone; "adjacent" waters of British Columbia are those comprising the Canadian two hundred mile exclusive economic zone; and "southeast Alaska" means that portion of Alaska south and east of Cape Suckling to the Canadian border. For purposes of this chapter, point of origination is established by a document which identifies the product and state or province in which it originates, including, but not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies.

(2) "Commercial" means related to or connected with buying, selling, bartering, or processing.

(3) "Possession" means the control of enhanced food fish by the owner and includes both actual and constructive possession. Constructive possession occurs when the person has legal ownership but not actual possession of the enhanced food fish.

(4) "Anadromous game fish" means steelhead trout and anadromous cutthroat trout and Dolly Varden char and includes byproducts and also parts of anadromous game fish, whether fresh, frozen, canned, or otherwise.

(5) "Landed" means the act of physically placing enhanced food fish (a) on a tender in the territorial waters of Washington; or (b) on any land within or without the state of Washington including wharves, piers, or any such extensions therefrom. [1985 c 413 § 1. Prior: 1983 1st ex.s. c 46 § 180; 1983 c 284 § 5; 1980 c 98 § 1.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.

(1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Chinook, coho, and chum salmon and anadromous game fish: Five percent.

(b) Pink and sockeye salmon: Three percent.

(c) Other food fish and shellfish, except oysters: Two percent.

(d) Oysters: Seven one-hundredths of one percent.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section. [1985 c 413 § 2; 1983 2nd ex.s. c 3 § 17; 1983 c 284 § 6; 1982 1st ex.s. c 35 § 10; 1980 c 98 § 2.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Findings—Intent—1983 c 284: "The legislature finds that there are commercial fish buyers benefiting financially from the propagation of game fish in the state. The legislature recognizes that license fees obtained from sports fishermen support the majority of the production of these game fish. The legislature finds that commercial operations which benefit from the commercial harvest of these fish should pay a tax to assist in the funding of these facilities. However, the intent of the legislature is not to support the commercial harvest of steelhead and other game fish." [1983 c 284 § 8.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.27.030 Exemptions. The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced food fish originating outside the state which enters the state as (a) frozen enhanced food fish or (b) enhanced food fish packaged for retail sales; (2) the growing, processing, or dealing with food fish which are raised from eggs or fry and which are under the physical control of the grower at all times until being sold or harvested; and (3) food fish, shellfish, anadromous game fish, and byproducts or parts of food fish shipped from outside the state which enter the state, except as provided in RCW 82.27.010, provided the taxpayer must have documentation showing shipping origination of fish exempt under this subsection to qualify for exemption. Such documentation includes, but is not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies. [1985 c 413 § 3; 1980 c 98 § 3.]

82.27.040 Credit for taxes paid to another taxing authority. A credit shall be allowed against the tax imposed by RCW 82.27.020 upon enhanced food fish with respect to any tax previously paid on that same enhanced food fish to any other legally established taxing authority. To qualify for a credit, the owner of the enhanced food fish must have documentation showing a tax was paid in another jurisdiction. [1985 c 413 § 4; 1980 c 98 § 4.]

82.27.050 Application of excise taxes' administrative provisions and definitions. All of the provisions of chapters 82.02 and 82.32 RCW shall be applicable and have full force and effect with respect to taxes imposed under this chapter. The meaning attributed to words and phrases in chapter 82.04 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under this chapter. [1980 c 98 § 5.]

82.27.060 Payment of tax—Remittance—Returns. The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made on or before the fifteenth day of the month next succeeding the end of the month in which the tax accrued. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to cover other periods, but in no event may periodic returns be filed for a period greater than one year. [1980 c 98 § 6.]

82.27.070 Deposit of taxes. All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the *game fund. [1983 c 284 § 7; 1980 c 98 § 7.]

***Reviser's note:** References to the "game fund" mean the "wildlife fund." See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

82.27.900 Effective date—Implementation—1980 c 98. This act shall take effect on July 1, 1980. The director of revenue is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective date. [1980 c 98 § 11.]

82.27.901 Severability—1985 c 413. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 413 § 6.]

Chapter 82.29A
LEASEHOLD EXCISE TAX

Sections

82.29A.010	Legislative findings and recognition.
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82.29A.040	Counties and cities authorized to impose tax—Maximum rate—Credit—Collection.
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82.29A.060	Administration—Audits.
82.29A.070	Disposition of revenue.
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82.29A.090	Distributions to counties and cities.
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82.29A.130	Exemptions.
82.29A.135	Exemption for leasehold interests in land, buildings, machinery, etc., used to manufacture alcohol fuel—Exceptions—Limitations—Claims—Administrative rules.
82.29A.140	Rules and regulations.
82.29A.150	Cancellation of taxes levied for collection in 1976.
82.29A.160	Improvements not defined as contract rent taxable under Title 84 RCW.
82.29A.900	Effective date—1975-'76 2nd ex.s. c 61.
82.29A.910	Severability—1975-'76 2nd ex.s. c 61.

Reviser's note: Throughout chapter 82.29A RCW the term "this 1976 amendatory act" has been changed to "this chapter, RCW 84.36.451 and 84.40.175." This 1976 amendatory act [1975-'76 2nd ex.s. c 61] also repealed chapter 82.29 RCW, RCW 84.36.450, 84.36.455 and 84.36.460.

82.29A.010 Legislative findings and recognition. The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property. [1975-'76 2nd ex.s. c 61 § 1.]

82.29A.020 Definitions. As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: *Provided*, That no interest in personal

property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: *Provided*, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date

of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any

other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town. [1986 c 285 § 1; 1979 ex.s. c 196 § 11; 1975-'76 2nd ex.s. c 61 § 2.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.29A.030 Tax imposed—Credit—Additional tax imposed. (1) There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent: *Provided*, That after the computation of the tax there shall be allowed credit for any tax collected pursuant to RCW 82.29A.040.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 18; 1982 1st ex.s. c 35 § 11; 1975-'76 2nd ex.s. c 61 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection. The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest in publicly owned property within the territorial limits of such county or city. The tax levied by a county under authority of this section shall not exceed six percent and the tax levied by a city shall not exceed four percent of taxable rent: *Provided*, That any county ordinance levying such tax shall contain a provision allowing a credit against the county tax for the full amount of any city tax imposed upon the same taxable event.

The department of revenue shall perform the collection of such taxes on behalf of such county or city. [1975-'76 2nd ex.s. c 61 § 4.]

82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting. (1) The leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 shall be paid by the lessee to the lessor and the lessor shall collect such tax and remit the same to the department of revenue. The tax shall be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. The tax payment shall be accompanied by such information

as the department of revenue may require. In the case of prepaid contract rent the payment may be prorated in accordance with instructions of the department of revenue and the prorated portion of the tax shall be due, one-half not later than May 31 and the other half not later than November 30 each year.

(2) The lessor receiving taxes payable under the provisions of this chapter shall remit the same together with a return provided by the department, to the department of revenue on or before the fifteenth day of the month following the month in which the tax is collected. The department may relieve any taxpayer or class of taxpayers from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than one year. The lessor shall be fully liable for collection and remittance of the tax. The amount of tax until paid by the lessee to the lessor shall constitute a debt from the lessee to the lessor. The tax required by this chapter shall be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter. Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax: *Provided*, That taxes due where contract rent has not been paid shall be reported by the lessor to the department and the lessee alone shall be liable for payment of the tax to the department.

(3) Each person having a leasehold interest subject to the tax provided for in this chapter arising out of a lease of federally owned or federal trust lands shall report and remit the tax due directly to the department of revenue in the same manner and at the same time as the lessor would be required to report and remit the tax if such lessor were a state public entity. [1975-'76 2nd ex.s. c 61 § 5.]

82.29A.060 Administration—Audits. All administrative provisions in chapters 82.02 and 82.32 RCW, as now or hereafter amended shall be applicable to taxes imposed pursuant to this chapter: *Provided*, That this section shall not authorize the issuance of any levy upon any property owned by the public lessor.

In selecting leasehold excise tax returns for audit the department of revenue shall give priority to any return an audit of which is specifically requested in writing by the county assessor or treasurer or other chief financial officer of any city or county affected by such return. Notwithstanding the provisions of RCW 82.32.330, findings of fact and determinations of the amount of taxable rent made pursuant to the provisions of this chapter shall be open to public inspection at all reasonable times. [1975-'76 2nd ex.s. c 61 § 6.]

82.29A.070 Disposition of revenue. All moneys received by the department of revenue from taxes levied

under provisions of RCW 82.29A.030 shall be transmitted to the state treasurer and deposited in the general fund. [1975-'76 2nd ex.s. c 61 § 7.]

82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account. The counties and cities shall contract, prior to the effective date of an ordinance imposing a leasehold excise tax, with the department of revenue for administration and collection. The department of revenue shall deduct a percentage amount, as provided by such contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by RCW 82.29A.040 which is collected by the department of revenue shall be deposited by the state department of revenue in the local leasehold excise tax account hereby created in the state treasury. Moneys in the local leasehold excise tax account may be spent only for distribution to counties and cities imposing a leasehold excise tax. [1985 c 57 § 84; 1981 2nd ex.s. c 4 § 8; 1975-'76 2nd ex.s. c 61 § 8.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

82.29A.090 Distributions to counties and cities. Bi-monthly the state treasurer shall make distribution from the local leasehold excise tax account to the counties and cities the amount of tax collected on behalf of each county or city. The state treasurer shall make the distribution under this section without appropriation. [1981 2nd ex.s. c 4 § 9; 1975-'76 2nd ex.s. c 61 § 9.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

82.29A.100 Distributions by county treasurers. Any moneys received by a county from the leasehold excise tax provided for under RCW 82.29A.040 shall be distributed proportionately by the county treasurer in accordance with RCW 84.56.230 as though such moneys were receipts from regular ad valorem property tax levies within such county: *Provided*, That no distribution shall be made to the state or any city: *And provided further*, That the pro rata calculation for proportionate distribution to taxing districts shall not include consideration of any rate(s) of levy by the state or any city. [1975-'76 2nd ex.s. c 61 § 10.]

82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance. It is the intent of this chapter that any local leasehold excise tax adopted pursuant to this chapter be as consistent and uniform as possible with the state leasehold excise tax. It is further the intent of this chapter that the local leasehold excise tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state leasehold excise tax upon the same taxable event. The department shall, as soon as practicable, and with the assistance of the appropriate

associations of county prosecutors and city attorneys, draft a model ordinance. [1975-'76 2nd ex.s. c 61 § 11.]

82.29A.120 Allowable credits. After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040 there shall be allowed the following credits in determining the tax payable:

(1) With respect to a leasehold interest other than a product lease, executed with an effective date of April 1, 1986, or thereafter, or a leasehold interest in respect to which the department of revenue under the authority of RCW 82.29A.020 does adjust the contract rent base used for computing the tax provided for in RCW 82.29A.030, there shall be allowed a credit against the tax as otherwise computed equal to the amount, if any, that such tax exceeds the property tax that would apply to such leased property if it were privately owned.

(2) With respect to a product lease, a credit of thirty-three percent of the tax otherwise due. [1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

82.29A.130 Exemptions. The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: *Provided*, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held

in trust by the United States or is subject to a restriction against alienation imposed by the United States: *Provided*, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: *Provided*, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: *Provided further*, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor. [1975-'76 2nd ex.s. c 61 § 13.]

82.29A.135 Exemption for leasehold interests in land, buildings, machinery, etc., used to manufacture alcohol fuel—Exceptions—Limitations—Claims—Administrative rules. (1) For the purposes of this section, "alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements and machines or implements of husbandry.

(2) All leasehold interests in buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, the land upon which such property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, but not land necessary for growing of crops, which together comprise a new alcohol manufacturing facility or an addition to an existing alcohol manufacturing facility, are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

For alcohol manufacturing facilities which produce alcohol for use as alcohol fuel and alcohol used for other purposes, the amount of the leasehold tax exemption shall be based upon an annually determined percentage

of the total gallons of alcohol produced that is sold and used as alcohol fuel.

(3) Claims for exemptions authorized by this section shall be filed with the department of revenue on forms prescribed by the department of revenue and furnished by the department of revenue. Once filed, the exemption is valid for six years and shall not be renewed. The department of revenue shall verify and approve such claims as the department of revenue determines to be justified and in accordance with this section. No claims may be filed after December 31, 1992.

The department of revenue may promulgate such rules, pursuant to chapter 34.04 RCW, as are necessary to properly administer this section. [1985 c 371 § 3; 1980 c 157 § 2.]

82.29A.140 Rules and regulations. The department of revenue of the state of Washington shall make such rules and regulations consistent with chapter 34.04 RCW and the provisions of this chapter, RCW 84.36.451 and 84.40.175 as shall be necessary to permit its effective administration including procedures for collection and remittance of taxes imposed by this chapter, and for intervention by the cities and counties levying under RCW 82.29A.040, in proceedings involving such levies and taxes collected pursuant thereto. [1975-'76 2nd ex.s. c 61 § 16.]

82.29A.150 Cancellation of taxes levied for collection in 1976. All assessments or levies of property taxes for collection in calendar year 1976 are hereby canceled with respect to values arising out of property exempted by RCW 84.36.451. [1975-'76 2nd ex.s. c 61 § 17.]

82.29A.160 Improvements not defined as contract rent taxable under Title 84 RCW. Notwithstanding any other provision of this chapter, RCW 84.36.451 and 84.40.175, improvements owned or being acquired by contract purchase or otherwise by any lessee or sublessee which are not defined as contract rent shall be taxable to such lessee or sublessee under Title 84 RCW at their full true and fair value without any deduction for interests held by the lessor or others. [1986 c 251 § 1; 1975-'76 2nd ex.s. c 61 § 18.]

82.29A.900 Effective date—1975-'76 2nd ex.s. c 61. This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That in the event the cancellation of assessments or levies of property taxes for collection in calendar year 1976 as provided for in RCW 82.29A.150 is declared null and void, then the effective date of this 1976 amendatory act shall be January 1, 1977. [1975-'76 2nd ex.s. c 61 § 22.]

82.29A.910 Severability—1975-'76 2nd ex.s. c 61. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid,

the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 61 § 23.]

Chapter 82.32

GENERAL ADMINISTRATIVE PROVISIONS

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Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

82.32.010 Application of chapter stated. The provisions of this chapter shall apply with respect to the taxes imposed under chapters 82.04 through 82.29A RCW of this title, under chapter 84.33 RCW, and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section. [1984 c 204 § 26; 1983 c 3 § 219; 1981 c 148 § 12; 1961 c 15 § 82.32.010. Prior: 1935 c 180 § 185; RRS § 8370–185.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

82.32.020 Definitions. For the purposes of this chapter:

The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," and "value of products" shall apply equally to the provisions of this chapter. [1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370–186.]

82.32.030 Registration certificates. If any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he shall, whether taxable or not, under such rules and regulations as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate upon payment of fifteen dollars. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required, but, for such additional certificates no additional payment shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business free of charge. No person shall engage in any business taxable hereunder without being registered in compliance with the provisions of this section,

except that the department, by general regulation, may provide for the issuance of certificates of registration to temporary places of business without requiring payment. [1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030. Prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370–187, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.040 Certificates for mechanical devices. Each mechanical device, the operator of which is taxable under *chapter 82.28 RCW, shall be considered a separate place of business and a separate registration certificate shall be obtained for each such device. The issuance of any certificate for such devices to any applicant therefor may be denied by the department, if the department, after hearing, finds that the conditions of the applicant's business or prior record as a taxpayer place in jeopardy the collection of the tax. The department may require that any applicant for a certificate of registration for any such device furnish a proper surety bond sufficient to secure the payment of any tax imposed. It shall be unlawful for any person to operate such device or permit it to be operated on his premises unless a certificate of registration has been obtained and is conspicuously displayed upon such device, or for any person to operate any such device under a forged certificate of registration or under a certificate of registration not issued for such device or to the operator thereof or under a certificate of registration which has been revoked, or for any person upon making application for a certificate of registration to fail or refuse to give any information requested by the department or to give false information with intent to conceal the true name or address of the owner or operator of such device.

Any person violating the provisions of this section shall be guilty of a misdemeanor.

Any device described herein which does not display a certificate of registration, or any device which displays a forged certificate of registration or a certificate of registration not issued for such device or to the operator thereof or revoked certificate of registration, is hereby declared to be contraband and may be seized by the department, or by any peace officer of the state, when directed by the department so to do, without warrant, and shall be offered for sale by the department in the same manner as property distrained under warrant for the satisfaction of delinquent taxes. The proceeds of sale shall be paid to the department and credited to the account of miscellaneous revenue: *Provided*, That the costs of the seizure and sale shall be paid out of the proceeds before making remittance.

Any money contained in such devices may be removed before the device is offered for sale and the amount thereof shall be considered as part of the proceeds of the sale. [1971 ex.s. c 299 § 15; 1961 c 15 § 82.32.040. Prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370–187, part.]

***Reviser's note:** Chapter 82.28 RCW was repealed by 1973 1st ex.s. c 218 § 29.

82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns. (1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability. [1983 2nd ex.s. c 3 § 63; 1982 1st ex.s. c 35 § 27; 1981 c 172 § 7; 1981 c 7 § 1.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: "This act shall take effect October 1, 1981." [1981 c 172 § 9; 1981 c 7 § 5.]

82.32.050 Deficient and delinquent payments—Penalties and interest—Limitations. If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and as to assessments made on and after May 1, 1965, including assessments for additional tax or penalties due prior to that date shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice, or within such further time as the department may provide. If payment is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

No assessment or correction of an assessment for additional taxes due may be made by the department more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter, (2) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (3) where a taxpayer has executed a written waiver of such limitation. [1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937

c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.060 Excess payment—Credit or refund—Payment of judgments for refund. If, upon receipt of an application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes prescribed by RCW 82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at his option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or sub-contracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: *Provided*, That no interest shall be allowed on such refund.

Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide.

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in like manner, upon the filing with the department of a certified copy of the order or judgment of the court. Except as to the credits in computing tax authorized by RCW 82.04.435, interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties, or interest paid by him after May 1, 1949, and interest at the same rate shall be allowed on any judgment recovered by a taxpayer for taxes, penalties, or interest paid after such date. [1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.065 Tax refund to consumer under new motor vehicle warranty laws—Credit or refund to new motor vehicle manufacturer. If a manufacturer makes a refund of sales tax to a consumer upon return of a new motor

vehicle under chapter 19.118 RCW, the department shall credit or refund to the manufacturer the amount of the tax refunded, upon receipt of documentation as required by the department. [1987 c 344 § 16.]

Effective dates—Expiration date—Severability—1987 c 344:
See RCW 19.118.900 through 19.118.902.

82.32.070 Records to be preserved—Examination—Estoppel to question assessment. Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such books and records as shall be required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

Any person claiming a credit against the tax imposed by chapter 82.04 RCW by reason of the provisions of RCW 82.04.435 shall keep and preserve until the claim has been verified or allowed by the department of revenue sufficient books, records and invoices to prove the right to and amount of such claim for credit, and no such claim shall be allowed by the department of revenue unless such books, records and invoices have been kept and preserved. [1983 c 3 § 221; 1967 ex.s. c 89 § 2; 1961 c 15 § 82.32.070. Prior: 1951 1st ex.s. c 9 § 7; 1935 c 180 § 190; RRS § 8370-190.]

82.32.080 Payment by check—Mailing returns or remittances—Time extension—Deposits—Records—Payment must accompany return. Payment of the tax may be made by uncertified check under such regulations as the department shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any

permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days shall be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit shall be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

The department shall review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

The department shall keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. [1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080. Prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

82.32.090 Late payment—Penalties. If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than two dollars.

If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars.

Notwithstanding the foregoing, the aggregate of penalties imposed under this chapter for failure to file a return, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed twenty-five percent of the tax due, or seven dollars, whichever is

greater. [1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: See note following RCW 82.32.045.

Construction—1971 ex.s. c 179: "This 1971 amendatory act shall apply only to taxes becoming due and payable in June, 1971 and thereafter." [1971 ex.s. c 179 § 2.]

82.32.100 Failure to file returns—Assessment of tax by department—Penalties. If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the books, records, and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to the superior court as hereinafter provided. To the assessment the department shall add, the penalties provided in RCW 82.32.090. The department shall notify the taxpayer by mail of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within ten days from the date of such notice.

No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter, (2) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (3) where a taxpayer has executed a written waiver of such limitation. [1971 ex.s. c 299 § 20; 1965 ex.s. c 141 § 4; 1961 c 15 § 82.32.100. Prior: 1951 1st ex.s. c 9 § 10; 1935 c 180 § 194; RRS § 8370-194.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.105 Waiver or cancellation of interest or penalties. If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax. The department of

revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter. Notwithstanding the foregoing the amount of any interest which has been waived, canceled or refunded prior to May 1, 1965 shall not be reassessed according to the provisions of this chapter. [1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.110 Examination of books or records—Subpoenas—Contempt. The department of revenue or its duly authorized agent may examine any books, papers, records, or other data, or stock of merchandise bearing upon the amount of any tax payable or upon the correctness of any return, or for the purpose of making a return where none has been made, or in order to ascertain whether a return should be made; and may require the attendance of any person at a time and place fixed in a summons served by any sheriff in the same manner as a subpoena is served in a civil case, or served in like manner by an agent of the department of revenue.

The persons summoned may be required to testify and produce any books, papers, records, or data required by the department with respect to any tax, or the liability of any person therefor.

The director of the department of revenue, or any duly authorized agent thereof, shall have power to administer an oath to the person required to testify; and any person giving false testimony after the administration of such oath shall be guilty of perjury in the first degree.

If any person summoned as a witness before the department, or its authorized agent, fails or refuses to obey the summons, or refuses to testify or answer any material questions, or to produce any book, record, paper, or data when required to do so, he shall be guilty of contempt, and the department shall thereupon institute proceedings in the superior court of Thurston county, or of the county in which such person resides, to punish him as for contempt of court. [1975 1st ex.s. c 278 § 79; 1961 c 15 § 82.32.110. Prior: 1935 c 180 § 194; RRS § 8370-194.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.120 Oaths and acknowledgments. All officers empowered by law to administer oaths, the director of the department of revenue, and such officers as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return or report required by law or the rules and regulations of the department of revenue. [1975 1st ex.s. c 278 § 80; 1961 c 15 § 82.32.120. Prior: 1935 c 180 § 195; RRS § 8370-195.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.130 Notice and orders—Service. Notwithstanding any other law, any notice or order required by this title to be mailed to any taxpayer may be served in

the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department of revenue, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served or mailed shall not release the taxpayer from any tax or any increases or penalties thereon. [1979 ex.s. c 95 § 2; 1975 1st ex.s. c 278 § 81; 1967 c 237 § 20; 1961 c 15 § 82.32.130. Prior: 1935 c 180 § 196; RRS § 8370-196.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1967 c 237: See RCW 34.04.921.

Savings—1967 c 237: See RCW 34.04.931.

Severability—1967 c 237: See RCW 34.04.901.

82.32.140 Taxpayer quitting business—Liability of successor. Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the taxpayer.

No successor shall be liable for any tax due from the person from whom he has acquired a business or stock of goods if he gives written notice to the department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1985 c 414 § 7; 1975 1st ex.s. c 278 § 82; 1961 c 15 § 82.32.140. Prior: 1957 c 88 § 1; 1935 c 180 § 197; RRS § 8370-197.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.145 Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds. (1) Upon termination, dissolution, or abandonment of a corporate business, any officer or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of

retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer or other person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability in situations where nonpayment of the retail sales tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [1987 c 245 § 1.]

82.32.150 Contest of tax—Prepayment required—Restraining orders and injunctions barred. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1961 c 15 § 82.32.150. Prior: 1935 c 180 § 198; RRS § 8370-198.]

82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department. Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department of revenue, may within twenty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the

assessment, and a conference for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith. If a conference is granted, the department shall fix the time and place therefor and notify the petitioner thereof by mail. After the conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner. If no such petition is filed within the twenty day period the assessment covered by the notice shall become final.

The procedures provided for herein shall apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmental rules and regulations as may be necessary to accommodate a claim for exemption or credit. [1975 1st ex.s. c 158 § 4; 1967 ex.s. c 26 § 49; 1963 ex.s. c 28 § 8; 1961 c 15 § 82.32.160. Prior: 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Effective date—1975 1st ex.s. c 158: See note following RCW 82.34.050.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department within the time limitation for refund provided in this chapter, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition he shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith; if a conference is granted, the department shall notify the petitioner by mail of the time and place fixed therefor. After the hearing the department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner. [1967 ex.s. c 26 § 50; 1961 c 15 § 82.32.170. Prior: 1951 1st ex.s. c 9 § 11; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.32.180 Court appeal—Procedure. Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24 RCW, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county, within the time limitation for a refund provided in chapter 82.32

RCW. In the appeal the taxpayer shall set forth the amount of the tax imposed upon him which he concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the department within the time herein specified and by filing the original thereof with proof of service with the clerk of the superior court of Thurston county. Within ten days after filing notice of appeal, the taxpayer shall file with the clerk of the superior court a good and sufficient surety bond payable to the state in the sum of two hundred dollars, conditioned to diligently prosecute the appeal and pay the state all costs that may be awarded if the appeal of the taxpayer is not sustained.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. The burden shall rest upon the taxpayer to prove that the tax as paid by him is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either party shall be allowed to appeal to the supreme court or the court of appeals in the same manner as other civil actions are appealed to those courts.

It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

The provisions of this section shall not apply to any tax payment which has been the subject of an appeal to the board of tax appeals with respect to which appeal a formal hearing has been elected. [1971 c 81 § 148; 1967 ex.s. c 26 § 51; 1965 ex.s. c 141 § 5; 1963 ex.s. c 28 § 9; 1961 c 15 § 82.32.180. Prior: 1951 1st ex.s. c 9 § 12; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Appeal to board of tax appeals, formal hearing: RCW 82.03.160.

82.32.190 Stay of collection pending suit. The department, by its order, may hold in abeyance the collection of tax from any taxpayer or any group of taxpayers when a question bearing on their liability for tax hereunder is pending before the courts: *Provided*, That the department may impose such conditions as may be deemed just and equitable and shall require the payment of interest at the rate of three-quarters of one percent of the amount of the tax for each thirty days or portion thereof from the date upon which such tax became due. [1971 ex.s. c 299 § 21; 1965 ex.s. c 141 § 6; 1961 c 15 § 82.32.190. Prior: 1937 c 227 § 19; 1935 c 180 § 200; RRS § 8370-200.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.200 Stay of collection—Bond. When any assessment or additional assessment has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department of revenue may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion thereof from the due date thereof until paid. [1975 1st ex.s. c 278 § 83; 1961 c 15 § 82.32.200. Prior: 1935 c 180 § 201; RRS § 8370–201.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.210 Tax warrant—Filing—Lien—Effect. If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant under its official seal in the amount of such unpaid sums, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant. If, however, the department of revenue believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

The department shall file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. Upon filing, the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed, and thereupon the amount of the warrant so docketed shall become a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien. The lien shall not be superior, however, to bona fide interests of third persons which had vested prior to the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment: *Provided, however,* That the phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer

mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction. The amount of the warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied. [1987 c 405 § 15; 1983 1st ex.s. c 55 § 8; 1967 ex.s. c 89 § 3; 1961 c 15 § 82.32.210. Prior: 1955 c 389 § 38; prior: 1951 1st ex.s. c 9 § 13; 1949 c 228 § 225, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370–202, part.]

Severability—1987 c 405: See note following RCW 70.94.450.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.32.215 Revocation of certificate of registration. If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, or if any taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of revenue of retail sales tax collected by him, the department of revenue may, by order issued under its official seal, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered, and until the taxpayer has deposited with the department of revenue such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer. [1983 1st ex.s. c 55 § 9.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.32.220 Execution of warrant—Levy upon property—Satisfaction. The department of revenue may issue an order of execution, pursuant to a filed warrant, under its official seal directed to the sheriff of the county in which the warrant has been filed, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department of revenue and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all

respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for his services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1983 1st ex.s. c 55 § 10; 1961 c 304 § 6; 1961 c 15 § 82.32.220. Prior: 1955 c 389 § 39; prior: 1951 1st ex.s. c 9 § 14; 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Fee for filing tax warrant by county clerk: RCW 36.18.020.

82.32.230 Agent of the department of revenue may execute. In the discretion of the department of revenue, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1983 1st ex.s. c 55 § 11; 1975 1st ex.s. c 278 § 84; 1961 c 15 § 82.32.230. Prior: 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default. In addition to the remedies provided in this chapter the department is hereby authorized to issue to any person, or to any political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, political subdivision or department, property which is or shall become due, owing, or belonging to any taxpayer against whom a warrant has been filed.

The notice and order to withhold and deliver shall be served by the sheriff of the county wherein the service is

made, or by his deputy, or by any duly authorized representative of the department, provided that service by such persons may also be made by certified mail, with return receipt requested, upon those persons, or political subdivision or department, to whom the notice and order to withhold and deliver is directed. Any person, or any political subdivision or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person or political subdivision or department, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the department of revenue or its duly authorized representative upon demand to be held in trust by the department for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the department conditioned upon final determination of liability.

Should any person or political subdivision fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person or political subdivision for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1987 c 208 § 1; 1975 1st ex.s. c 278 § 85; 1971 ex.s. c 299 § 22; 1963 ex.s. c 28 § 11.]

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective dates—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.237 Notice and order to withhold and deliver—Continuing lien—Effective date. Upon service, the notice and order to withhold and deliver shall constitute a continuing lien on property of the taxpayer and upon wages due, owing, or belonging to the taxpayer. The department shall include in the caption of the notice and order to withhold and deliver "continuing lien." The effective date of a notice and order to withhold and deliver served under RCW 82.32.235 shall be the date of service thereof. [1987 c 208 § 2.]

82.32.240 Tax constitutes debt—Priority of lien. Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action

by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of revenue of such administration, receivership or assignment within thirty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: *Provided*, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon. [1975 1st ex.s. c 278 § 86; 1961 c 15 § 82.32.240. Prior: 1949 c 228 § 26; 1935 c 180 § 203; Rem. Supp. 1949 § 8370-203.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.245 Search for and seizure of property—Warrant—Procedure. (1) When there is probable cause to believe that there is property within this state, not otherwise exempt from process or execution, in the possession or control of any taxpayer against whom a tax warrant has been filed which remains unsatisfied, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to such officers commanding the search for and seizure of the property described in the request for warrant.

(2) Application for, issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be in accordance with the criminal rules of the superior court and the justice court.

(3) The sheriff or agent of the department shall levy execution upon property seized pursuant to this section as provided in RCW 82.32.220 and 82.32.230.

(4) Nothing in this section shall require the application for and issuance of any warrant not otherwise required by law. [1985 c 414 § 3.]

82.32.260 Payment condition to dissolution or withdrawal of corporation. In the case of any corporation organized under the laws of this state, the courts shall not enter or sign any decree of dissolution, nor shall the secretary of state file in his office any certificate of dissolution, and in the case of any corporation organized under the laws of another jurisdiction and admitted to do business in this state, the secretary of state shall withhold the issuance of any certificate of withdrawal, until proof, in the form of a certificate from the department of revenue, has been furnished by the applicant for such dissolution or withdrawal, that every license fee, tax,

increase, or penalty has been paid or provided for. [1975 1st ex.s. c 278 § 87; 1961 c 15 § 82.32.260. Prior: 1935 c 180 § 204; RRS § 8370-204.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.265 Use of collection agencies to collect taxes outside the state. (1) The department may retain, by written contract, collection agencies licensed under chapter 19.16 RCW or licensed under the laws of another state or the District of Columbia for the purpose of collecting from sources outside the state of Washington taxes including interest and penalties thereon imposed under this title and RCW 84.33.041.

(2) Only accounts represented by tax warrants filed in the superior court of a county in the state as provided by RCW 82.32.210 may be assigned to a collection agency, and no such assignment may be made unless the department has previously notified or has attempted to notify the taxpayer of his or her right to petition for correction of assessment within the time provided and in accordance with the procedures set forth in chapter 82.32 RCW.

(3) Collection agencies assigned accounts for collection under this section shall have only those remedies and powers that would be available to them as assignees of private creditors. However, nothing in this section limits the right to enforce the liability for taxes lawfully imposed under the laws of this state in the courts of another state or the District of Columbia as provided by the laws of such jurisdictions and RCW 4.24.140 and 4.24.150.

(4) The account of the taxpayer shall be credited with the amounts collected by a collection agency before reduction for reasonable collection costs, including attorneys fees, that the department is authorized to negotiate on a contingent fee or other basis. [1987 c 80 § 5; 1985 c 414 § 4.]

82.32.270 Accounting period prescribed. The taxes imposed hereunder, and the returns required therefor, shall be upon a calendar year basis; but, if any taxpayer in transacting his business, keeps books reflecting the same on a basis other than the calendar year, he may, with consent of the department of revenue, make his returns, and pay taxes upon the basis of his accounting period as shown by the method of keeping the books of his business. [1975 1st ex.s. c 278 § 88; 1961 c 15 § 82-32.270. Prior: 1935 c 180 § 205; RRS § 8370-205.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.280 Tax declared additional. Taxes imposed hereunder shall be in addition to any and all other licenses, taxes, and excises levied or imposed by the state or any municipal subdivision thereof. [1961 c 15 § 82-32.280. Prior: 1935 c 180 § 206; RRS § 8370-206.]

82.32.290 Unlawful acts—Penalties. (1) (a) It shall be unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign a resale certificate without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law. [1985 c 414 § 2; 1975 1st ex.s. c 278 § 89; 1961 c 15 § 82.32.290. Prior: 1935 c 180 § 207; RRS § 8370-207.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.300 Department of revenue to administer. The administration of this and chapters 82.04 through 82.27 RCW of this title is vested in the department of revenue which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for

the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The department of revenue shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce their provisions, which shall have the same force and effect as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees shall be fixed by the department and shall be charged to the proper appropriation for the department.

The department shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper. [1983 c 3 § 222; 1975 1st ex.s. c 278 § 90; 1961 c 15 § 82.32.300. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department of revenue for any act done by him or for the recovery of any money exacted by or paid to him and by him paid over to the department, in the performance of his official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1975 1st ex.s. c 278 § 91; 1961 c 15 § 82.32.310. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.320 Revenue to state treasurer. The department of revenue, on the next business day following the receipt of any payments hereunder, shall transmit them to the state treasurer, taking his receipt therefor. [1975 1st ex.s. c 278 § 92; 1961 c 15 § 82.32.320. Prior: 1935 c 180 § 209; RRS § 8370-209.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.330 Secrecy enjoined—Exceptions. Except as hereinafter provided it shall be unlawful for the department of revenue or any member, deputy, clerk, agent, employee, or representative thereof or any other person to make known or reveal any facts or information contained in any return filed by any taxpayer or disclosed in any investigation or examination of the taxpayer's books and records made in connection with the administration hereof. The foregoing, however, shall not be construed to prohibit the department of revenue or a

member or employee thereof from: (1) Giving such facts or information in evidence in any court action involving tax imposed hereunder or involving a violation of the provisions hereof or involving another state department and the taxpayer; (2) giving such facts and information to the taxpayer or his duly authorized agent; (3) publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof; (4) giving such facts or information, for official purposes only, to the governor or attorney general, or to any state department, agency, board, commission, council, or any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions; (5) permitting its records to be audited and examined by the proper state officer, his agents and employees; (6) giving any such facts or information to the proper officer of the internal revenue service of the United States or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state; or (7) giving any such facts or information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, or the army or navy departments of the United States, or any authorized representative thereof, for official purposes.

Any person acquiring knowledge of such facts or information in the course of his employment with the department of revenue and any person acquiring knowledge of such facts and information as provided under (4), (5), (6) and (7) above, who reveals or makes known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine of not exceeding one thousand dollars and, if the offender or person guilty of such violation is an officer or employee of the state, he shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32-.330. Prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

82.32.340 Chargeoff of uncollectible taxes—Destruction of files and records. (1) Any tax or penalty which the department of revenue deems to be uncollectible may be transferred from accounts receivable, subject to approval by the director of financial management, to a suspense account and cease to be accounted an asset. Any item transferred shall continue to be a debt due the state from the taxpayer and may at any time within twelve years from the filing of a warrant covering such amount with the clerk of the superior court be transferred back to accounts receivable for the purpose of collection. The department of revenue may charge off as finally uncollectible any tax or penalty which it deems uncollectible at any time after twelve years from the date that the last tax return for the delinquent taxpayer

was or should have been filed if the department of revenue and the attorney general are satisfied that there are no available and lawful means by which such tax or penalty may thereafter be collected.

After any tax or penalty has been charged off as finally uncollectible under the provisions of this section, the department of revenue may destroy any or all files and records pertaining to the liability of any taxpayer for such tax or penalty.

The department of revenue, subject to the approval of the state records committee, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer for such taxable year, who has fully paid all taxes, penalties and interest for such taxable year, or any preceding taxable year for which such taxes, penalties and interest have been fully paid. In the event that such files and records are reproduced on film pursuant to RCW 40.20.020 for use in accordance with RCW 40.20.030, the original files and records may be destroyed immediately after reproduction and such reproductions may be destroyed at the expiration of the above five-year period, subject to the approval of the state records committee.

(2) Notwithstanding subsection (1) of this section and subject to the approval of the office of financial management, the department may charge off any tax within its jurisdiction to collect that is owed by a taxpayer, including any penalty or interest thereon, up to a maximum of one hundred dollars if the department ascertains that the cost of collecting that tax would be greater than the total amount which is owed or likely in the near future to be owed by the taxpayer. [1985 c 414 § 1; 1979 1st ex.s. c 95 § 3; 1979 c 151 § 184; 1967 ex.s. c 89 § 4; 1965 ex.s. c 141 § 7; 1961 c 15 § 82.32.340. Prior: 1955 c 389 § 40; 1939 c 225 § 30; 1937 c 227 § 21; 1935 c 180 § 210(a); RRS § 8370-210a.]

82.32.350 Closing agreements authorized. The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title for any taxable period or periods. [1971 ex.s. c 299 § 23; 1961 c 15 § 82.32.350. Prior: 1945 c 251 § 1; Rem. Supp. 1945 § 8370-225.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.360 Conclusive effect of agreements. Upon approval of such agreement, evidenced by execution thereof by the department of revenue and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or of misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by any officer, employee, or agent of the state, or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment,

abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. [1975 1st ex.s. c 278 § 93; 1961 c 15 § 82.32.360. Prior: 1945 c 251 § 2; Rem. Supp. 1945 § 8370-226.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.380 Revenues to be deposited in general fund. The state treasurer, upon receipt of any payments of tax, penalty, interest, or fees collected hereunder shall deposit them to the credit of the state general fund or such other fund as may be provided by law. [1961 c 15 § 82.32.380. Prior: 1945 c 249 § 10; 1943 c 156 § 12A, 1941 c 178 § 19(a); 1939 c 225 § 31; 1937 c 227 § 32; 1935 c 180 § 211; Rem. Supp. 1945 § 8370-211.]

82.32.390 Certain revenues to be deposited in water quality account. The department of revenue shall deposit into the water quality account all moneys received from the imposition on consumers of the taxes under chapters 82.08 and 82.12 RCW on the sales or use of articles of tangible personal property which become or are to become an ingredient or component of new or existing water pollution control facilities and activities, as defined in RCW 70.146.020, which received full or partial funding from the water quality account. [1986 c 3 § 15.]

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

82.32.400 Revenue accrual account—Use—Earnings. The revenue accrual account is hereby created in the state treasury. At the close of each fiscal biennium, the state treasurer shall transfer the cash balance in the basic account of the state general fund, other than amounts restricted for liabilities to be paid in the next fiscal biennium, to this account. Moneys in this account may only be spent after appropriation by statute for the purpose of decreasing the unfunded liability of a state retirement system. All earnings of investments of balances in the revenue accrual account shall be credited to the basic account of the general fund. [1987 c 502 § 8; 1985 c 57 § 85; 1984 c 285 § 607; 1983 2nd ex.s. c 3 § 57; 1983 c 7 § 33.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—1984 c 285: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 285 § 612.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Chapter 82.34

POLLUTION CONTROL FACILITIES—TAX EXEMPTIONS AND CREDITS

Sections

82.34.010 Definitions.

(1987 Ed.)

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82.34.010 Definitions. Unless a different meaning is plainly required by the context, the following words as hereinafter used in this chapter shall have the following meanings:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined: (a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle. (b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structure, disposal system or other property installed or constructed: For a municipal corporation other than for coal-fired, steam electric generating plants constructed and operated pursuant to chapter 54.44 RCW for which an application for a certificate was made no later than December 31, 1969, together with any air or water pollution control facility improvement which may be made hereafter to such plants; or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities: *Provided further*, That the word "facility" shall not include any control device, machinery, equipment, structure, disposal system, or other

property installed or constructed with the proceeds derived from the sale of industrial revenue bonds issued under chapter 39.84 RCW.

(2) "Industrial waste" shall mean any liquid, gaseous, radioactive or solid waste substance or combinations thereof resulting from any process of industry, manufacture, trade or business, or from the development or recovery of any natural resources.

(3) "Treatment works" or "control device" shall mean any machinery, equipment, structure or property which is installed, constructed or acquired for the primary purpose of controlling air or water pollution and shall include, but shall not be limited to such devices as precipitators, scrubbers, towers, filters, baghouses, incinerators, evaporators, reservoirs, aerators used for the purpose of treating, stabilizing, incinerating, holding, removing or isolating sewage and industrial wastes.

(4) "Disposal system" shall mean any system containing treatment works or control devices and includes but is not limited to pipelines, outfalls, conduits, pumping stations, force mains, solids handling equipment, instrumentation and monitoring equipment, ducts, fans, vents, hoods and conveyors and all other construction, devices, appurtenances and facilities used for collecting or conducting, sewage and industrial waste to a point of disposal, treatment or isolation except that which is necessary to manufacture of products.

(5) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been made not later than December 31, 1969, except as follows:

(a) With respect to a facility required to be installed, such application will be deemed timely made if made not later than November 30, 1981, and within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency.

(b) With respect to a water pollution control facility for which an application was made in anticipation of specific requirements for such facility being promulgated by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(c) With respect to a facility for which plans and specifications were approved by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(d) For the purposes of (a), (b), and (c) of this subsection, "facility" means a facility installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967.

(6) "Appropriate control agency" shall mean the state water pollution control commission; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located, or the state air pollution control board, where the facility is not or will not be located within the area of an operating local or

regional air pollution control agency, or where the state air pollution control board has assumed jurisdiction.

(7) "Department" shall mean the department of revenue. [1984 c 42 § 1; 1981 2nd ex.s. c 9 § 1; 1980 c 175 § 1; 1967 ex.s. c 139 § 1.]

82.34.015 Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c). The department shall not issue a certificate under RCW 82.34.010(5)(b) before July 1, 1985, or before the promulgation of specific requirements for such facility by the appropriate control agency, whichever is later. The department shall not issue a certificate under RCW 82.34.010(5)(c) before July 1, 1985. [1984 c 42 § 2.]

82.34.020 Application for certificate—Filing—Form—Contents. An application for a certificate shall be filed with the department not later than November 30, 1981, and in such manner and in such form as may be prescribed by the department. The application shall contain estimated or actual costs, plans and specifications of the facility including all materials incorporated or to be incorporated therein and a list describing, and showing the cost, of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the operating procedure for the facility, or a time schedule for the acquisition and installation or attachment of the facility and the proposed operating procedure for such facility. [1981 2nd ex.s. c 9 § 2; 1967 ex.s. c 139 § 2.]

82.34.030 Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board. A certificate shall be issued by the department within thirty days after approval of the application by the appropriate control agency. Such approval shall be given when it is determined that the facility is designed and is operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air or for the control and reduction of water pollution and that the facility is suitable, reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, as the case may be, and it shall notify the department of its findings within thirty days of the date on which the application was submitted to it for approval. In making such determination, the appropriate control agency shall afford to the applicant an opportunity for a hearing: *Provided*, That if the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local or regional air pollution control agency, such applicant may appeal to the state air pollution control board pursuant to rules and regulations established by that board. [1967 ex.s. c 139 § 3.]

82.34.040 Rules and regulations. The department may adopt such rules and regulations as it deems necessary for the administration of this chapter subject to the provisions of RCW 34.04.020 through 34.04.060. Such rules and regulations shall not abridge the authority of

the appropriate control agency as provided in this chapter or any other law. [1967 ex.s. c 139 § 4.]

82.34.050 Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption. (1) The original acquisition of a facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax imposed by chapter 82.12 RCW when the due date for payment of such taxes is subsequent to the effective date of the certificate: *Provided*, That the exemption of this section shall not apply to servicing, maintenance, repairs, and replacement of parts after a facility is complete and placed in operation. Sales and use taxes paid by a holder of a certificate with respect to expenditures incurred for acquisition of a facility prior to the issuance of a certificate covering such facility may be claimed as a tax credit as provided in subsection (2) of this section.

(2) Subsequent to July 30, 1967 the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the exemption for the facility covered by such certificate against any future taxes to be paid pursuant to chapters 82.04, 82.12 and 82.16 RCW: *Provided*, That on and after July 30, 1967 if such person elects to take a tax credit for a facility under this subsection he may not take further credit under RCW 82.04.435. [1975 1st ex.s. c 158 § 1; 1967 ex.s. c 139 § 5.]

Effective date—1975 1st ex.s. c 158: "The provisions of this amendatory act shall be applicable with respect to applications for a pollution control tax exemption and credit certificate made to the department of revenue on or after January 1, 1975." [1975 1st ex.s. c 158 § 5.]

82.34.060 Application for final cost determination as to existing or new facility—Filing—Form—Contents—Approval—Determination of costs—Credits against taxes imposed by chapters 82.04, 82.12, 82.16 RCW—Limitations. (1) On and after July 30, 1967, an application for a determination of the cost of an existing or newly completed pollution control facility may be filed with the department in such manner and in such form as may be prescribed by the department. The application shall contain the final cost figures for the installation of the facility and reasonable supporting documents and other proof as required by the department. In the event such facility is not already covered by a certificate issued for the purpose of authorizing the tax exemption or credit provided for in this chapter, the department shall seek the approval of the facility from the appropriate control agency. For any application for a certificate or supplement which was filed with the department not later than November 30, 1981, the department shall determine the final cost of the pollution control facility and issue a supplement to the existing certificate or an original certificate stating the cost of the pollution control facility: *Provided*, That the cost of an existing pollution control facility shall be the depreciated value thereof at the time of application filed pursuant to this section.

(2) When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a

credit may be claimed against taxes imposed pursuant to chapters 82.04, 82.12 and 82.16 RCW. The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

(a) No credit exceeding fifty percent of the taxes payable under chapters 82.04, 82.12 and 82.16 RCW shall be allowed in any reporting period;

(b) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized: *Provided*, That for the purposes of this chapter the determination of "net commercial value" shall not include a deduction for the cost or depreciation of the facility.

(c) The total cumulative amount of such credits allowed for any facility covered by a certificate shall not exceed fifty percent of the cost of such facility.

(d) The total cumulative amount of credits against state taxes authorized by this chapter shall be reduced by the total amount of any federal investment credit or other federal tax credit actually received by the certificate holder applicable to the facility. This reduction shall be made as an offset against the credit claimed in the first reporting period following the allowance of such investment credit, and thereafter as an offset against any credit balance as it shall become available to the certificate holder.

(3) Applicants and certificate holders shall provide the department with information showing the net commercial value of materials captured or recovered by a facility and shall make all pertinent books and records available for examination by the department for the purposes of determining the credit provided by this chapter. [1981 2nd ex.s. c 9 § 3; 1967 ex.s. c 139 § 6.]

82.34.070 Credits accumulated prior to July 30, 1967 pursuant to RCW 82.04.435. Nothing in this chapter shall be deemed to affect the application of credits pursuant to RCW 82.04.435 accumulated prior to July 30, 1967. [1967 ex.s. c 139 § 7.]

82.34.080 Modification or replacement of facility. If subsequent to the issuance of a certificate or supplement for a facility, a determination is made to modify or replace such facility, the holder thereof may file an application for a new certificate or supplement covering such modified or replacement facility in accordance with the procedures set forth in this chapter for original certificates and supplements thereto: *Provided*, That an application for a new certificate or supplement covering such modified or replacement facility must be filed with the department not later than November 30, 1981. After the issuance by the department of any new certificate or supplement, all subsequent tax exemptions and credits for the modified or replacement facility shall be based thereon. [1981 2nd ex.s. c 9 § 4; 1967 ex.s. c 139 § 8.]

82.34.090 Certified mail—Use of in sending certificates or notice of refusal to issue certificates. The department shall send a certificate or supplement when issued, by certified mail to the applicant. Notice of the department's refusal to issue a certificate or supplement shall likewise be sent to the applicant by certified mail. [1967 ex.s. c 139 § 9.]

82.34.100 Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement. The water pollution control commission or the state air pollution control board, after notice to the department and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

(1) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the department shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this chapter or against which the credit provided for by this chapter has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

(2) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the department modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified. [1967 ex.s. c 139 § 10.]

82.34.110 Administrative and judicial review. Administrative and judicial review of a decision of the control agency or the department shall be in accordance with the applicable provisions of chapters 34.04, 43.21B, 82.03, and 82.32 RCW, as now or hereafter amended. [1975 1st ex.s. c 158 § 2; 1967 ex.s. c 139 § 11.]

Effective date—1975 1st ex.s. c 158: See note following RCW 82.34.050.

82.34.900 Severability—1967 ex.s. c 139. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 ex.s. c 139 § 12.]

82.34.901 Severability—1981 2nd ex.s. c 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 9 § 5.]

Chapter 82.35

COGENERATION FACILITIES—TAX CREDITS

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82.35.020	Definitions.
82.35.040	Issuance of certificate—Limitations—Tabulation of costs incurred—Administrative rules.
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82.35.900	Severability—1979 ex.s. c 191.

Property tax exemption for cogeneration facilities: RCW 84.36.485.

82.35.010 Intent. The state of Washington has a large and growing need for electrical energy. The state of Washington possesses a great potential for the generation of electrical or mechanical power and useful heat energy through the process of cogeneration. It is the purpose and intent of the legislature to promote the growth of cogeneration in the state of Washington. [1979 ex.s. c 191 § 1.]

82.35.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Cogeneration" means the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

(2) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation other than an electric utility.

(3) "Certificate" means a cogeneration tax credit certificate granted by the department.

(4) "Cost" means only the cost of a cogeneration facility which is in addition to the cost that the applicant otherwise would incur to meet the applicant's demands for useful heat. "Cost" does not include expenditures

which are offset by cost savings, including but not limited to savings resulting from early retirement of existing equipment.

(5) "Department" means the department of revenue.

(6) "Electric utility" means any person, corporation, or governmental subdivision authorized and operating under the Constitution and laws of the state of Washington which is primarily engaged in the generation or sale of electric energy.

(7) "Office" means the state energy office. [1979 ex.s. c 191 § 2.]

82.35.040 Issuance of certificate—Limitations—Tabulation of costs incurred—Administrative rules. (1) No certificate or supplement may be issued after December 31, 1984. No certificate including a supplement thereto may be issued for cogeneration facility costs in excess of ten million dollars for any application submitted under this chapter.

(2) The department shall keep a running tabulation of the total cogeneration facility costs incurred or planned to be incurred pursuant to certificates or supplements issued under this chapter. The department may not issue any new certificate or any supplement if the certificate or supplement would result in the tabulation exceeding one hundred million dollars. Nothing in this section shall be deemed to bar any certificate holder from amending the certificate or obtaining a supplement thereto so long as the amendment or supplement is issued prior to December 1, 1984, and does not increase the total amount of cogeneration facility costs incurred or planned to be incurred under the original certificate.

(3) The department may adopt any rules under chapter 34.04 RCW it considers necessary for the administration of this chapter. [1982 1st ex.s. c 2 § 3; 1979 ex.s. c 191 § 4.]

82.35.050 Credit against taxes—Conditions—Amount—Limitations. When a cogeneration facility is operational and a certificate pertaining thereto has been issued, a credit may be claimed against taxes imposed under chapter 82.04 RCW, if the due date for payment of the taxes is after the effective date of the certificate: *Provided*, That the date on which the facility is operational is no more than four years after the date of issuance of the certificate. The amount of the credit shall be three percent of the cost of a facility covered by the certificate for each year the certificate remains in force. The credits shall be cumulative and shall be subject only to the following limitations:

(1) The tax credit shall apply to capital costs only and shall not apply to operating costs.

(2) A person, firm, corporation, or organization which acquires a cogeneration facility shall be entitled to the credit only to the extent that it has previously not been taken. Under no circumstances may a credit be taken more than once against any cost or portion thereof of a cogeneration facility.

(3) No credit exceeding fifty percent of the taxes payable under chapter 82.04 RCW shall be allowed in any reporting period.

(4) The total cumulative amount of the credits allowed for any cogeneration facility covered by a certificate shall not exceed fifty percent of the cost of the cogeneration facility less the total amount of federal investment credit or other federal tax credits applicable to the cogeneration facility.

(5) State credits shall not become available until one year after final cost verification by the department. [1982 1st ex.s. c 2 § 1; 1979 ex.s. c 191 § 5.]

82.35.070 Issuance of certificate or supplement and notice of refusal to issue certificate or supplement—Certified mail. The department shall send a certificate or supplement, when issued, by certified mail to the applicant. Notice of the department's refusal to issue a certificate or supplement shall likewise be sent to the applicant by certified mail. [1979 ex.s. c 191 § 7.]

82.35.080 Revocation of certificate—Grounds—Continuance of certificate—Liability for money saved—Technical assistance. (1) Except as provided in subsection (2) of this section, the department shall revoke any certificate issued under this chapter if it finds that any of the following have occurred with respect to the certificate:

(a) The certificate was obtained by fraud or deliberate misrepresentation;

(b) The certificate was obtained through the use of inaccurate data but without any intention to commit fraud or misrepresentation;

(c) The facility was constructed or operated in violation of any provision of this chapter or provision imposed by the department as a condition of certification; or

(d) The cogeneration facility is no longer capable of being operated for the primary purpose of cogeneration.

(2) If the department finds that there are few inaccuracies under subsection (1)(b) of this section and that cumulatively they are insignificant in terms of the cost or operation of the facility or that the inaccurate data is not attributable to carelessness or negligence and its inclusion was reasonable under the circumstances, then the department may provide for the continuance of the certificate and whatever modification it considers in the public interest.

(3) Any person, firm, corporation, or organization that obtains a certificate revoked under this section shall be liable for the total amount of money saved by claiming the credits and exemptions provided under this chapter and RCW 84.36.485. The total amount of the credits shall be collected as delinquent business and occupation taxes, and the total of the exemptions shall be collected and distributed as delinquent property taxes. Interest shall accrue on the amounts of the credits and exemptions from the date the taxes were otherwise due.

(4) The office shall provide technical assistance to the department in carrying out its responsibilities under this section. [1979 ex.s. c 191 § 8.]

82.35.900 Severability—1979 ex.s. c 191. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act

or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 191 § 13.]

Chapter 82.36

MOTOR VEHICLE FUEL TAX

Sections

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Dispensing device label required for gasoline containing alcohol: RCW 19.94.505.

Refunds of tax on marine fuel, disposition under marine recreation land act: Chapter 43.99 RCW.

Tax proceeds pledged to ferry bond retirement: RCW 47.61.070, 47.61.090.

82.36.010 Definitions. For the purposes of this chapter:

(1) "Motor vehicle" means every vehicle that is in itself a self-propelled unit, equipped with solid rubber, hollow-cushion rubber, or pneumatic rubber tires and capable of being moved or operated upon a public highway, except motor vehicles used as motive power for or in conjunction with farm implements and machines or implements of husbandry;

(2) "Motor vehicle fuel" means gasoline or any other inflammable gas or liquid, by whatsoever name such gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats;

(3) "Distributor" means every person who refines, manufactures, produces, or compounds motor vehicle fuel and sells, distributes, or in any manner uses it in this state; also every person engaged in business as a bona fide wholesale merchant dealing in motor vehicle fuel who either acquires it within the state from any person refining it within or importing it into the state, on which the tax has not been paid, or imports it into this state and sells, distributes, or in any manner uses it in this state;

(4) "Service station" means a place operated for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles;

(5) "Department" means the department of licensing;

(6) "Director" means the director of licensing;

(7) "Dealer" means any person engaged in the retail sale of liquid motor vehicle fuels;

(8) "Person" means every natural person, firm, partnership, association, or private or public corporation;

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for purposes of vehicular travel;

(10) "Broker" means every person, other than a distributor, engaged in business as a broker, jobber, or wholesale merchant dealing in motor vehicle fuel or other petroleum products used or usable in propelling motor vehicles, or in other petroleum products which may be used in blending, compounding, or manufacturing of motor vehicle fuel;

(11) "Producer" means every person, other than a distributor, engaged in the business of producing motor vehicle fuel or other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel;

(12) "Distribution" means all withdrawals of motor vehicle fuel for delivery to others, to retail service stations, or to unlicensed bulk storage plants;

(13) "Bulk storage plant" means, pursuant to the licensing provisions of RCW 82.36.070, any plant, under the control of the distributor, used for the storage of motor vehicle fuel to which no retail outlets are directly connected by pipe lines;

(14) "Marine fuel dealer" means any person engaged in the retail sale of liquid motor vehicle fuel whose place of business and or sale outlet is located upon a navigable waterway;

(15) "Aggregate motor vehicle fuel tax revenues" means the amount of excise taxes to be paid by distributors, retailers, and users pursuant to chapters 82.36, 82.37, and 82.38 RCW for any designated fiscal period, whether or not such amounts are actually received by the department of licensing. The phrase does not include fines or penalties assessed for violations;

(16) "Fiscal year" means a twelve-month period ending June 30th;

(17) "State personal income" means the dollar amount published as total personal income of persons in the state for the calendar year by the United States department of commerce or its successor agency;

(18) "State personal income ratio" for any calendar year means that ratio expressed in percentage terms that is the sum of one hundred percent, plus seventy percent of the percentage increase or decrease in state personal income for the calendar year under consideration as compared to state personal income for the immediately preceding calendar year;

(19) "Motor vehicle fund revenue" means all state taxes, fees, and penalties deposited in the motor vehicle fund and all other state revenue required by statute to be deposited in the motor vehicle fund, but does not include (a) moneys derived from nonfuel tax sources which are deposited directly in the several accounts, (b) interest deposited directly in the several accounts within the motor vehicle fund, (c) federal funds, (d) proceeds from the sale of bonds, or (e) reimbursements to the motor vehicle fund for services performed by the department of transportation for others;

(20) "Alcohol" means alcohol that is produced from renewable resources and is produced in this state or in a state that extends a tax exemption or credit for the sale

of alcohol produced in this state for use in motor vehicle fuel that is at least equal to a tax exemption or credit for the sale of alcohol produced in the other state for use in motor vehicle fuel;

(21) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. [1987 c 174 § 1; 1983 1st ex.s. c 49 § 25; 1981 c 342 § 1; 1979 c 158 § 223; 1977 ex.s. c 317 § 1; 1971 ex.s. c 156 § 1; 1967 c 153 § 1; 1965 ex.s. c 79 § 1; 1961 c 15 § 82.36.010. Prior: 1939 c 177 § 1; 1933 c 58 § 1; RRS § 8327-1; prior: 1921 c 173 § 1.]

Effective date—1987 c 174: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 174 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 342: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. This act shall only take effect upon the passage of Senate Bills No. 3669 and 3699, and if Senate Bills No. 3669 and 3699 are not both enacted by the 1981 regular session of the legislature this amendatory act shall be null and void in its entirety." [1981 c 342 § 12.] Senate Bills No. 3669 and 3699 became 1981 c 315 and 1981 c 316, respectively.

Severability—1981 c 342: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 342 § 13.]

Effective dates—1977 ex.s. c 317: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.] Section 9 was the amendment to RCW 46.68.100 by 1977 ex.s. c 317.

Severability—1977 ex.s. c 317: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 317 § 23.]

82.36.020 Tax imposed—Rate to be computed—Allocation of proceeds. Every distributor shall pay, in addition to any other taxes provided by law, an excise tax to the director at a rate computed in the manner provided in RCW 82.36.025 for each gallon of motor vehicle fuel sold, distributed, or used by him in the state as well as on each gallon upon which he has assumed liability for payment of the tax under the provisions of RCW 82.36.100: *Provided*, That under such regulations as the director may prescribe sales or distribution of motor vehicle fuel may be made by one licensed distributor to another licensed distributor free of the tax. In the computation of the tax, one-quarter of one percent of the net gallonage otherwise taxable shall be deducted by the distributor before computing the tax due, on account of the losses sustained through handling. The tax imposed hereunder shall be in addition to any other tax required by law, and shall not be imposed under circumstances in which the tax is prohibited by the Constitution or laws of the United States. The tax herein

imposed shall be collected and paid to the state but once in respect to any motor vehicle fuel. An invoice shall be rendered by a distributor to a purchaser for each distribution of motor vehicle fuel.

The proceeds of the motor vehicle fuel excise tax collected on the net gallonage after the deduction provided for herein and after the deductions for payments and expenditures as provided in RCW 46.68.090, shall be distributed as provided in RCW 46.68.100. [1983 1st ex.s. c 49 § 26; 1982 1st ex.s. c 6 § 1; 1977 ex.s. c 317 § 2; 1974 ex.s. c 28 § 1. Prior: 1973 1st ex.s. c 160 § 1; 1973 1st ex.s. c 124 § 2; 1972 ex.s. c 24 § 1; 1970 ex.s. c 85 § 3; 1967 ex.s. c 145 § 75; 1967 ex.s. c 83 § 2; 1965 ex.s. c 79 § 2; 1963 c 113 § 1; 1961 ex.s. c 7 § 1; 1961 c 15 § 82.36.020; prior: 1957 c 247 § 1; 1955 c 207 § 1; 1951 c 269 § 43; 1949 c 220 § 7; 1939 c 177 § 2; 1933 c 58 § 5; Rem. Supp. 1949 § 8327-5; prior: 1931 c 140 § 2; 1923 c 81 § 1; 1921 c 173 § 2.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

Disbursal and release of funds—1967 ex.s. c 83: "All funds heretofore accumulated and undistributed to any city and town by reason of the matching requirements of the 1961 amendatory provisions in RCW 82.36.020 and 82.40.290 shall be immediately disbursed and released for use in accordance with the 1967 amendatory provisions of RCW 82.36.020 and 82.40.290.

This section is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately." [1967 ex.s. c 83 § 63.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

82.36.025 Computation of motor vehicle fuel tax rate—Department of licensing determination of motor vehicle fund revenues—Factors—Motor vehicle fund revenue limit—Study of financial condition of motor vehicle fund. The motor vehicle fuel tax rate shall be computed as the sum of the tax rate provided in subsection (1) of this section and the additional tax rates provided in subsections (2) through (4) of this section.

(1) Except as required in subsection (5) of this section, a motor vehicle fuel tax rate of fifteen cents per gallon shall apply to the sale, distribution, or use of motor vehicle fuel from July 1, 1983, through June 30, 1984, and a motor vehicle fuel tax rate of seventeen cents per gallon shall apply thereafter.

(2) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) and (2) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the rural arterial trust account in the motor vehicle fund for expenditures under RCW 36.79.020.

(3) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this

additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) and (2) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the urban arterial trust account in the motor vehicle fund.

(4) An additional motor vehicle full [fuel] tax rate of one-third cent per gallon shall be applied to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) and (2) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the motor vehicle fund to be expended for highway purposes of the state as defined in RCW 46.68.130.

(5) (a) Before the start of each fiscal year, the department of licensing shall estimate the total aggregate motor vehicle fuel tax revenues and the total of all other revenues that will accrue to the motor vehicle fund during the fiscal year. The estimated total of all other state revenues to accrue to the motor vehicle fund during the fiscal year shall include those revenues (other than the aggregate motor vehicle fuel tax revenues) which the department of transportation with the concurrence of the office of financial management determines will accrue during the fiscal year, assuming that collections of such revenues for the fiscal year shall be at the same level as during the fiscal year just ended, adjusted however for historic variations in collections according to yearly periods and for projected trends, but shall not include the proceeds of the sale of bonds, reimbursements to the motor vehicle fund for services performed by the department of transportation for others, moneys derived from nonfuel tax sources that are deposited directly in the several accounts within the motor vehicle fund, interest deposited directly in the several accounts within the motor vehicle fund, nor federal funds. The estimated total aggregate motor vehicle fuel tax revenues for the fiscal year shall include those revenues that the department of licensing determines will accrue during the fiscal year, assuming the sale, distribution, and use of motor vehicle fuel and special fuel within the state for the fiscal year will be at the same volume as during the fiscal year last ended, adjusted however for the historic variations in sales, distribution, and use according to yearly periods and for projected trends.

(b) If the estimated aggregate motor fuel tax revenues plus all other state revenues that will accrue to the motor vehicle fund during a fiscal year as computed in (a) of this subsection exceed the motor vehicle fund revenue limit in the fiscal year as computed in (c) of this subsection, the rate of motor fuel tax provided in subsection (1) of this section shall be reduced by one-half cent increments for the fiscal year only, commencing at the beginning of the fiscal year, as may be necessary to reduce the estimated total revenues for the fiscal year to within the motor vehicle fund revenue limit.

(c) The motor vehicle fund revenue limit for any fiscal year shall be the previous fiscal year's motor vehicle

fund revenue limit multiplied by the average state personal income ratio for the three calendar years immediately preceding the beginning of the fiscal year for which the limit is being computed. For purposes of computing the motor vehicle fund revenue limit for the fiscal year ending June 30, 1981, the phrase "the previous fiscal year's motor vehicle fund revenue limit" means the motor vehicle fund revenue collected in the fiscal year ending June 30, 1979, multiplied by the average state personal income ratio for the calendar years 1976, 1977, and 1978.

(6) The legislative transportation committee shall study and analyze each biennium the financial condition of the motor vehicle fund and accounts thereof with particular emphasis on RCW 82.36.010 and 82.36.025. [1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.36.030 Monthly gallonage return—Default assessment—Penalty. Every distributor shall on or before the twenty-fifth day of each calendar month file, on forms furnished by the director, a statement signed by the distributor or his authorized agent showing the total number of gallons of motor vehicle fuel sold, distributed, or used by such distributor within this state during the preceding calendar month.

If any distributor fails to file such report, the director shall proceed forthwith to determine from the best available sources, the amount of motor vehicle fuel sold, distributed, or used by such distributor for the unreported period, and said determination shall be presumed to be correct for that period until proved by competent evidence to be otherwise. The director shall immediately assess the excise tax in the amount so determined, adding thereto a penalty of ten percent for failure to report. Such penalty shall be cumulative of other penalties herein provided. All statements filed with the director, as required in this section, shall be public records.

If any distributor establishes by a fair preponderance of evidence that his or her failure to file a report by the due date was attributable to reasonable cause and was not intentional or wilful, the department may waive the penalty imposed by this section. [1987 c 174 § 2; 1961 c 15 § 82.36.030. Prior: 1957 c 247 § 2; 1943 c 84 § 1; 1933 c 58 § 7; Rem. Supp. 1943 § 8327-7; prior: 1921 c 173 § 4.]

Severability—1987 c 174: See note following RCW 82.36.010.

82.36.032 Penalty for filing fraudulent monthly gallonage return. If any distributor files a fraudulent monthly gallonage return with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in

addition to all other penalties prescribed by law. [1987 c 174 § 7.]

Effective date—1987 c 174: See note following RCW 82.36.010.

82.36.038 Payment of tax—Due dates—Electronic funds transfer. (1) Except as provided in subsection (2) of this section, the tax due on motor vehicle fuel that is sold, distributed, or used during a month shall be paid on or before the twenty-fifth day of the following month.

(2) If payment of the tax due on motor vehicle fuel that is sold, distributed, or used during a month is made by electronic funds transfer, it shall be made on or before the state business day immediately preceding the last state business day of the following month.

(3) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [1987 c 174 § 3.]

Effective date—1987 c 174: See note following RCW 82.36.010.

82.36.040 Payment of tax—Penalty for delinquency. If payment of any tax due is not received by the due date, there shall be assessed a penalty of two percent of the amount of the tax. If any distributor establishes by a fair preponderance of evidence that his or her failure to pay the amount of tax due by the due date was attributable to reasonable cause and was not intentional or wilful, the department may waive the penalty imposed by this section.

Any motor vehicle fuel tax, penalties, and interest payable under the provisions of this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment. The department may waive the interest when the department determines that the cost of processing the collection of the interest exceeds the amount of interest due.

In any suit brought to enforce the rights of the state under this chapter, the certificate of the director showing the amount of taxes, penalties, interest and cost unpaid by any distributor and that the same are due and unpaid to the state shall be prima facie evidence of the facts as shown. [1987 c 174 § 4; 1977 c 28 § 1; 1961 c 15 § 82.36.040. Prior: 1957 c 247 § 3; 1955 c 207 § 3; prior: 1953 c 151 § 1; 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

Effective date—1987 c 174: See note following RCW 82.36.010.

82.36.050 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. When any application, report, notice, payment, or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail addressed to such officer, agent or employee, it shall be deemed filed or

received on the date shown by the post office cancellation mark on the envelope containing it or on the date it was mailed if proof satisfactory to said officer, agent, or employee of the state establishes that the actual mailing occurred on an earlier date: *Provided, however,* That no penalty for delinquency shall attach, nor will the statutory period be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail properly addressed to said officer, agent, or employee of the state, even though never received if a duplicate of such document or payment is filed. [1961 c 15 § 82.36.050. Prior: 1957 c 247 § 4; 1947 c 135 § 1; Rem. Supp. 1947 § 8327-8a.]

82.36.060 Application for distributor's license—Bond or security. Every person, before becoming a distributor or continuing in business as a distributor, shall make an application to the department for a license authorizing the applicant to engage in business as a distributor. Applications for such licenses shall be made to the department on forms to be furnished by the department, and shall be accompanied by a fee of ten dollars.

Before granting any license authorizing any person to engage in business as a distributor, the department shall require applicant to file with the department, in such form as shall be prescribed by the department, a corporate surety bond duly executed by the applicant as principal, payable to the state and conditioned for faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter. The total amount of the bond or bonds, required of any distributor shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds required of any distributor, the department shall require a bond or bonds equivalent in total amount to twice the estimated monthly excise tax determined in such manner as the department may deem proper. If at any time the estimated excise tax to become due during the succeeding month amounts to more than fifty percent of the established bond, the department shall require additional bonds or securities to maintain the marginal ratio herein specified or shall demand excise tax payments to be made weekly or semimonthly to meet the requirements hereof.

In lieu of a bond in excess of five thousand dollars the distributor may file with the department a property statement setting forth a complete description of all his property and the values thereof, and showing the amount of any indebtedness or encumbrance thereon to the end that the department may ascertain whether or not the distributor can be compelled to respond in twice the amount of the taxes due or to become due hereunder. If the department determines that the distributor can be compelled to respond in twice the amount of the tax the department may accept such statement in lieu of a bond in excess of five thousand dollars. The department may at any time demand from the distributor a new property

statement and may at any time if the department deems the property of the distributor insufficient to secure the payment of twice the amount of the taxes require the distributor to furnish a bond in such amount as will secure the payment of twice the amount of the taxes.

The total amount of the bond or bonds required of any distributor shall never be less than five thousand dollars nor more than fifty thousand dollars.

No recoveries on any bond or the execution of any new bond shall invalidate any bond and no revocation of any license shall effect the validity of any bond but the total recoveries under any one bond shall not exceed the amount of the bond.

In lieu of any such bond or bonds in total amount as herein fixed, a distributor may deposit with the state treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of an actual market value not less than the amount so fixed by the department.

Any surety on a bond furnished by a distributor as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty days from the date upon which such surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The department shall promptly, upon receiving any such request, notify the distributor who furnished the bond; and unless the distributor, on or before the expiration of the thirty day period, files a new bond, or makes a deposit in accordance with the requirements of this section, the department shall forthwith cancel the distributor's license. Whenever a new bond is furnished by a distributor, the department shall cancel his old bond as soon as the department and the attorney general are satisfied that all liability under the old bond has been fully discharged.

The department may require a distributor to give a new or additional surety bond or to deposit additional securities of the character specified in this section if, in its opinion, the security of the surety bond theretofore filed by such distributor, or the market value of the properties deposited as security by the distributor, shall become impaired or inadequate; and upon the failure of the distributor to give such new or additional surety bond or to deposit additional securities within thirty days after being requested so to do by the department, the department shall forthwith cancel his license. [1973 c 96 § 1; 1961 c 15 § 82.36.060. Prior: 1933 c 58 § 2; RRS § 8327-2.]

82.36.070 Issuance of license—Display—Bulk storage plant license cards—Refusal of issuance of license. The application in proper form having been accepted for filing, the filing fee paid, and the bond or other security having been accepted and approved, the department shall issue to the applicant a license to

transact business as a distributor in the state, and such license shall be valid until canceled or revoked.

The license so issued by the department shall not be assignable, and shall be valid only for the distributor in whose name issued.

The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.

Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the department shall issue to each such licensee a license certificate which shall be displayed conspicuously by the distributor at his principal place of business. The department shall also issue separate license cards for each bulk storage plant operated by such distributor. Such license cards shall indicate the number so assigned the distributor, the location of the storage plant for which the card is used, and such other information as the department may prescribe. The license card shall be conspicuously displayed at each bulk storage plant to which it is assigned, and it shall be unlawful for any distributor to operate or maintain a bulk storage plant in this state for the purpose of storing motor fuel without displaying such license card as herein provided. Bulk plant licenses shall be continuing until canceled or revoked. The distributor shall report on forms prescribed by the department any change in the number or capacity of bulk storage plants operated or maintained at the time such change occurs.

In the event an application for a license to transact business as a distributor is filed by any person whose license has heretofore been canceled for cause by the department, or if the department is of the opinion that the application is not filed in good faith, or that the application is filed by some person as a subterfuge for the real person in interest whose license has heretofore been canceled for cause, the department, after a hearing, of which the applicant shall be given five days' notice in writing and at which the applicant may appear in person or by counsel and present testimony, may refuse to issue such a person a license to transact business as a distributor. [1973 c 96 § 2; 1965 ex.s. c 79 § 3; 1961 c 15 § 82.36.070. Prior: 1957 c 247 § 5; 1955 c 207 § 4; prior: 1933 c 58 § 3, part; RRS § 8327-3, part.]

82.36.080 Penalty for distributing without license—Default assessment. It shall be unlawful for any person to be a distributor without first securing a license from the director.

If any person becomes a distributor without first securing the license required herein the excise tax shall be immediately due and payable on account of all motor vehicle fuel distributed or used by him. The director shall proceed forthwith to determine from the best available sources, the amount of the tax, and he shall immediately assess the tax in the amount found due, together with a penalty of one hundred percent of the tax, and shall make his certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty, or both, such certificate shall be prima facie evidence that the person therein named is indebted to the

state in the amount of the tax and penalty therein stated. Any tax or penalty so assessed may be collected in the manner prescribed in this chapter with reference to delinquency in payment of the tax or by an action at law, which the attorney general shall commence and prosecute to final determination at the request of the director. The foregoing remedies of the state shall be cumulative and no action taken pursuant to this section shall relieve any person from the penal provisions of this chapter. [1961 c 15 § 82.36.080. Prior: 1955 c 207 § 5; prior: (i) 1933 c 58 § 3, part; RRS § 8327-3, part. (ii) 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

82.36.090 Discontinuance or transfer of business—Notice. Whenever a distributor ceases to engage in business as a distributor within the state by reason of the discontinuance, sale, or transfer of his business, he shall notify the director in writing at the time the discontinuance, sale, or transfer takes effect. Such notice shall give the date of discontinuance, and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties, and interest under this chapter, not yet due and payable, shall become due and payable concurrently with such discontinuance, sale, or transfer, and any such distributor shall make a report and pay all such taxes, interest, and penalties, and surrender to the director the license certificate theretofore issued to him.

If an overpayment of tax was made by the distributor, prior to the discontinuance or transfer of his business, such overpayment may be refunded to such distributor or may be credited to the transferee of such business if such transferee qualifies as a distributor under the provisions of this chapter. [1967 c 153 § 2; 1965 ex.s. c 79 § 4; 1961 c 15 § 82.36.090. Prior: 1933 c 58 § 4; RRS § 8327-4.]

82.36.100 Tax required of persons not classed as distributors—Duties—Procedure—Distribution of proceeds—Penalties. Every person other than a distributor who acquires any motor vehicle fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such motor vehicle fuel into this state and sells, distributes, or in any manner uses it in this state shall, if the tax has not been paid, apply for a license to carry on such activities, file bond, make reports, comply with all regulations the director may prescribe in respect thereto, and pay an excise tax at the rate computed in the manner provided in RCW 82.36.025 for each gallon thereof so sold, distributed, or used during the fiscal year for which such rate is applicable in the manner provided for distributors, and the director shall issue a license to such person in the manner provided for issuance of licenses to distributors. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the motor vehicle fuel excise tax in RCW 82.36.020. However, a distributor licensed under this chapter may deliver motor vehicle fuel to an importer in individual

quantities of five hundred gallons or less and assume the liability for payment of the tax to this state. Under such conditions, the importer is exempt from the requirements of this section. For failure to comply with this chapter such person is subject to the same penalties imposed upon distributors. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing in this section may be construed as classifying such persons as distributors. [1983 1st ex.s. c 49 § 28; 1977 ex.s. c 317 § 3; 1967 ex.s. c 83 § 3; 1961 ex.s. c 7 § 2; 1961 c 15 § 82.36.100. Prior: 1957 c 247 § 6; 1951 c 267 § 1; 1939 c 177 § 5; RRS § 8327-5a.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

82.36.110 Delinquency—Lien of tax—Notice. If any person liable for the tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person in the prosecution of business or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof.

The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the director has filed notice of such lien in the office of the county auditor of the county in which the principal place of business of the taxpayer is located.

The auditor, upon presentation of a notice of lien, and without requiring the payment of any fee, shall file and index it in the manner now provided for deeds and other conveyances except that he shall not be required to include, in the index, any description of the property affected by the lien. The lien shall continue until the amount of the tax, together with any penalties and interest subsequently accruing thereon, is paid. The director may issue a certificate of release of lien when the amount of the tax, together with any penalties and interest subsequently accruing thereon, has been satisfied, and such release may be recorded with the auditor of the county in which the notice of lien has been filed.

The director shall furnish to any person applying therefor a certificate showing the amount of all liens for motor vehicle fuel tax, penalties and interest that may be of record in the files of the director against any person

under the provisions of this chapter. [1961 c 15 § 82.36.110. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.120 Delinquency—Notice to debtors. In the event any distributor is delinquent in the payment of his excise tax hereunder, the director may give notice of the amount thereof by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such distributor, or owing any debts to such distributor at the time of receipt by them of such notice, and thereafter the persons notified shall neither transfer nor make any other disposition of such credits, other personal property, or debts, until twenty days have elapsed from and after receipt of such notice unless the director has given his consent to a previous transfer, or other disposition. All persons so notified must, within five days after receipt of the notice, advise the director of any and all such credits, other personal property, or debts in their possession, under their control or owing by them, as the case may be. [1961 c 15 § 82.36.120. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.130 Delinquency—Tax warrant. If any distributor is in default for more than ten days in the payment of any excise taxes or penalties thereon, the director shall issue a warrant under the official seal of his office directed to the sheriff of any county of the state commanding him to levy upon and sell the goods and chattels of the distributor, without exemption, found within his jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the director and to pay the director the money collected by virtue thereof within the time to be therein specified, which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom the warrant is directed shall proceed upon it in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgment by a court of record and shall be entitled to the same fees for his services to be collected in the same manner. [1961 c 15 § 82.36.130. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.140 State may pursue remedy against distributor or bond. In a suit or action by the state on any bond filed with the director recovery thereon may be had without first having sought or exhausted its remedy against the distributor; nor shall the fact that the state has pursued, or is in the course of pursuing, any remedy against the distributor waive its right to collect the taxes, penalties, and interest by proceeding against such bond or against any deposit of money or securities made by the distributor. [1961 c 15 § 82.36.140. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.150 Records to be kept by distributors and producers. Every distributor shall keep a true and accurate record on such form as the director may prescribe

of all stock of petroleum products on hand, of all raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing-head gasoline and other petroleum products needed in, or which may be used in, compounding, blending, or manufacturing motor vehicle fuel; of the amount of crude oil refined, the gravity thereof and the yield therefrom, as well as of such other matters relating to transactions in petroleum products as the director may require. Every distributor shall take a physical inventory of the petroleum products at least once during each calendar month and have the record of such inventory and of the other matters mentioned in this section available at all times for the inspection of the director. Upon demand of the director every distributor shall furnish a statement under oath as to the contents of any records to be kept hereunder.

Every producer shall keep a true and accurate record in such form as may be prescribed by the director of all manufacture and distribution of casing-head gasoline, kerosene distillates and other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel, and every broker shall likewise keep a true and accurate record of all purchases of such petroleum products in such manner as to disclose the vendor, the quantity purchased, the correct description of the commodity, and the means of transportation from such broker to the vendee. All records required by this section shall be available at all times for the inspection of the director or his representative who may require a statement under oath as to contents thereof. [1965 ex.s. c 79 § 5; 1961 c 15 § 82.36.150. Prior: 1933 c 58 § 10; RRS § 8327-10; prior: 1921 c 173 § 6, part.]

82.36.160 Records to be preserved by distributors and dealers. Every distributor shall maintain in the office of his principal place of business in this state, for a period of three years, records of motor vehicle fuel received, sold, distributed, or used by him, in such form as the director may prescribe, together with invoices, bills of lading, and other pertinent papers as may be required under the provisions of this chapter.

Every dealer purchasing motor vehicle fuel taxable under this chapter for the purpose of resale, shall maintain within this state, for a period of two years a record of motor vehicle fuels received, the amount of tax paid to the distributor as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require. [1961 c 15 § 82.36.160. Prior: 1957 c 247 § 7; 1933 c 58 § 11; RRS § 8327-11; prior: 1921 c 173 § 6, part.]

82.36.170 Additional reports. The director may, from time to time, require additional reports from distributors, brokers, dealers, or producers with reference to any of the matters herein concerned. Such reports shall be made and filed on forms prepared by the director. [1961 c 15 § 82.36.170. Prior: 1933 c 58 § 12; RRS § 8327-12; prior: 1921 c 173 § 9.]

82.36.180 Examinations and investigations. The director, or his duly authorized agents, may make such examinations of the records, stocks, facilities, and equipment of distributors, producers, brokers, and service stations, and such other investigations as he may deem necessary in carrying out the provisions of this chapter. If such examinations or investigations disclose that any reports of distributors of motor vehicle fuel theretofore filed with the director pursuant to the requirements of this chapter have shown incorrectly the gallonage of motor vehicle fuel distributed or the tax accruing thereon, the director may make such changes in subsequent reports and payments of such distributors as he may deem necessary to correct the errors disclosed.

Every such distributor or such other person not maintaining records in this state so that an audit of such records may be made by the director or his duly authorized representative shall be required to make the necessary records available to the director at his request and at his designated office within this state; or, in lieu thereof, the director or his duly authorized representative shall proceed to any out-of-state office at which the records are prepared and maintained to make such examination. [1967 ex.s. c 89 § 6; 1965 ex.s. c 79 § 6; 1961 c 15 § 82.36.180. Prior: 1939 c 177 § 3; 1933 c 58 § 13; RRS § 8327-13; prior: 1921 c 173 § 6, part.]

82.36.190 Revocation of licenses. The director shall revoke the license of any distributor refusing or neglecting to comply with any provision of this chapter. The director shall mail by registered mail addressed to such distributor at his last known address a notice of intention to cancel, which notice shall give the reason for cancellation. The cancellation shall become effective without further notice if within ten days from the mailing of the notice the distributor has not made good his default or delinquency.

The director may cancel any license issued to any distributor, such cancellation to become effective sixty days from the date of receipt of the written request of such distributor for cancellation thereof, and the director may cancel the license of any distributor upon investigation and sixty days notice mailed to the last known address of such distributor if he ascertains and finds that the person to whom the license was issued is no longer engaged in the business of a distributor, and has not been so engaged for the period of six months prior to such cancellation. No license shall be canceled upon the request of any distributor unless the distributor, prior to the date of such cancellation, pays to the state all taxes imposed by the provisions of this chapter, together with all penalties accruing by reason of any failure on the part of the distributor to make accurate reports or pay said taxes and penalties.

In the event the license of any distributor is canceled by the director, and in the further event that the distributor pays to the state all excise taxes due and payable by him upon the receipt, sale, or use of motor vehicle fuel, together with any and all penalties accruing by reason of any failure on the part of the distributor to make accurate reports or pay said taxes and penalties, the director

shall cancel the bond filed by the distributor. [1961 c 15 § 82.36.190. Prior: 1933 c 58 § 14; RRS § 8327-14.]

82.36.200 Carriers of motor vehicle fuel—Examination of records, stocks, etc. The director or his authorized agents may at any time during normal business hours examine the records, stocks, facilities and equipment of any person engaged in the transportation of motor vehicle fuel within the state of Washington for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes on same in enforcing the provisions of this chapter. [1965 ex.s. c 79 § 7; 1961 c 15 § 82.36.200. Prior: 1957 c 218 § 1; 1953 c 157 § 1; 1943 c 84 § 3; 1933 c 58 § 15; Rem. Supp. 1943 § 8327-15.]

82.36.210 Carriers of motor vehicle fuel on highways—Invoice, bill of sale, etc., required—Inspections—Impounding—Penalty—Enforcement.

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk to points in this state from any point without this state, shall before entering upon the public highways of this state with such conveyance, have and possess during the entire time they are hauling motor vehicle fuel, an invoice, bill of sale, or other statement showing the true name and address of the seller or consignor, the name of the purchaser or consignee, if any, and the number of gallons. The person hauling such motor vehicle fuel shall at the request of any sheriff, deputy sheriff, constable, highway patrolman, or authorized representative of the department, or other person authorized by law to inquire into, or investigate said matters, produce and offer for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle. If the hauler fails to produce the invoice, bill of sale, or other statement, or if when produced it fails to disclose the aforesaid information, the officer or other person authorized to make inquiry, shall take and impound the motor vehicle fuel together with the conveying equipment until the tax on the motor vehicle fuel, together with penalty equal to one hundred percent of the tax, and other expenses, charges, and costs have been paid. In case of default, and the taking and impounding herein provided for, the tax, damages, and costs shall be collected, even though the full excise tax may have already been paid on the motor vehicle fuel. In case the tax, damages and other charges are not paid within forty-eight hours after the taking of said property, the director may proceed to sell it in the mode and manner provided by law for the sale of personal property under execution. [1965 ex.s. c 79 § 8; 1961 ex.s. c 21 § 30; 1961 c 15 § 82.36.210. Prior: 1933 c 58 § 16; RRS § 8327-16.]

82.36.220 Exemptions—Tourists. Every person who imports motor vehicle fuel into this state for his own use in equipment other than motor vehicles shall not, for that reason alone, be required to secure a distributor's license or to comply with any of the provisions of this chapter imposed upon a distributor or with the

provisions of RCW 82.36.100; but such person shall make a report verified under oath and file the same with the director on or before the tenth day of the succeeding month, showing the number of gallons of motor vehicle fuel so imported and the number of gallons of such motor vehicle fuel used during the preceding month, the name of the person from whom the motor vehicle fuel was purchased, the date of purchase, the place of storage, and the manner of use or intended use together with a description of the equipment in which the same is used. These reports shall be filed upon blanks furnished by the director: *Provided*, That any person coming into this state in an aircraft or motor boat shall not be required to make such a report in respect to any motor vehicle fuel carried in the fuel tanks of such vehicle for the purpose of propelling such vehicle, and every person coming into this state in a motor vehicle who shall transport in the fuel tanks of such vehicle motor vehicle fuel for the propulsion thereof shall be subject to all the provisions of the motor vehicle fuel importer use tax act applying to taxation of fuel in vehicles coming into this state, but if the motor vehicle fuel so brought into the state be removed from the fuel tanks of such vehicles or used for any purpose other than the propulsion of the vehicles, the person so importing motor vehicle fuel shall be subject to all the provisions of this chapter applying to distributors. The director shall have the right, in order to establish the validity of any exemption, to examine the books and records of the claimant for such purpose, and the failure of the claimant to accede to the demand for such examination shall constitute a waiver of all rights to the exemption herein granted. [1963 ex.s. c 22 § 20; 1961 ex.s. c 21 § 31; 1961 c 15 § 82.36.220. Prior: 1957 c 247 § 9; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

82.36.225 Exemptions—Alcohol for use as fuel—Tax credit—Expiration of section. Alcohol of any proof that is sold in this state for use as fuel in motor vehicles, farm implements and machines, or implements of husbandry is exempt from the motor vehicle fuel tax under this chapter. In addition, a tax credit of sixty percent of the tax rate imposed by RCW 82.36.025 shall be given for every gallon of alcohol used in an alcohol-gasoline blend which contains at least nine and one-half percent or more by volume of alcohol: *Provided*, That in no case may the tax credit claimed be greater than the tax due on the gasoline portion of the blended fuel.

This section shall expire on December 31, 1992. [1985 c 371 § 4; 1981 c 342 § 4; 1980 c 131 § 3.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.36.226 Intent—Reflection of tax credit in price. To encourage the production and use of alcohol as an alternative motor fuel, it is the intent of the legislature that the tax credit provided in RCW 82.36.225 be reflected in the retail price of alcohol blended fuels to

make these fuels competitive with other fuels. [1981 c 342 § 3.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.36.230 Exemptions—Imports, exports, federal sales—Export and exemption certificates—Reciprocity. The provisions of this chapter requiring the payment of taxes shall not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while they are in interstate or foreign commerce, nor to motor vehicle fuel, exported from this state by a qualified distributor, nor to sales by a distributor of motor vehicle fuel in individual quantities of five hundred gallons or less for export to another state or country by the purchaser other than in the supply tank of a motor vehicle: *Provided*, That such distributor is licensed in the state of destination to collect and remit the applicable destination state taxes thereon, nor to any motor vehicle fuel sold by a qualified distributor to the armed forces of the United States or to the national guard for use exclusively in ships or for export from this state. The distributor shall report such imports, exports and sales to the director as hereinafter provided and at such times, on such forms, and in such detail as he may require, otherwise the exemption granted in this section shall be null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering such exempt sale shall have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.

To claim any exemption from taxes under this section on account of the exportation of motor vehicle fuel by a distributor other than deliveries in his own equipment, such distributor shall execute an export certificate in such form as shall be furnished by the director, containing a statement, made by some person having actual knowledge of the fact of exportation, that the motor vehicle fuel has been exported from the state, and giving such details with reference to such shipment as the director may require. All export certificates must be completed and filed with the director within three months of the end of the calendar month in which the shipments to which they relate were made, unless the state, territory or country of destination would not be prejudiced with respect to its collection of taxes thereon if the certificate is not filed within such time. The director may, in cases where it is believed no useful purpose would be served by filing of an export certificate, waive the certificate: *Provided*, That the director for good cause shall have the right to rescind the previous authorization for waiver of the export certificate. Failure to file the certificate within the time required by this section shall not preclude the distributor from filing a claim for refund on motor vehicle fuel exported as provided in RCW 82.36-.310 or otherwise in chapter 82.36 RCW, with such information as the director may require to support the validity of such claim.

To claim any exemption from taxes under this section on account of sales of motor vehicle fuel to the armed

forces of the United States or to the national guard, the distributor shall be required to execute an exemption certificate in such form as shall be furnished by the director, containing a certified statement by an authorized officer of the armed forces having actual knowledge of the purpose for which the exemption is claimed. Any claim for exemption based on such sales shall be made by the distributor within six months of the date of sale. The provisions of this section exempting motor vehicle fuel sold to the armed forces of the United States or to the national guard from the tax imposed hereunder shall not apply to any motor vehicle fuel sold to contractors purchasing such fuel either for their own account or as the agents of the United States or the national guard for use in the performance of contracts with the armed forces of the United States or the national guard.

In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred gallons or less for export by the purchaser, the distributor shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as shall be prescribed by the director. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the distributor in good faith.

The director may at any time require of any distributor any information he deems necessary to determine the validity of the claimed exemption, and failure to supply such data will constitute a waiver of all right to the exemption claimed. The director is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by distributors in reporting to the director so as to prevent evasion of the tax imposed by this chapter.

Upon request from the officials to whom are entrusted the enforcement of the motor fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces, or the Dominion of Canada, the director may forward to such officials any information which he may have relative to the import or export of any motor vehicle fuel by any distributor: *Provided*, That such governmental unit furnish like information to this state. [1971 ex.s. c 156 § 2; 1967 c 153 § 3; 1965 ex.s. c 79 § 9; 1961 c 15 § 82.36.230. Prior: 1957 c 247 § 10; prior: 1953 c 150 § 1; 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

82.36.240 Sales to state or political subdivisions not exempt. Nothing in this chapter shall be construed to exempt from the payment of the tax any motor vehicle fuel sold and delivered to or used by the state or any political subdivision thereof, or any inflammable petroleum products other than motor vehicle fuel, used by the state, or any political subdivision thereof, in the propulsion of motor vehicles as herein defined. [1961 c 15 § 82.36.240. Prior: 1957 c 247 § 11; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

82.36.250 Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use. Any person who purchases or otherwise acquires motor vehicle fuel upon which the tax has not been paid, from the United States government, or any of its agents or officers, for use not specifically associated with any governmental function or operation or so acquires inflammable petroleum products other than motor vehicle fuel and uses the same in the propulsion of motor vehicles as herein defined, for a use not associated with any governmental function or operation, shall pay to the state the tax herein provided upon the motor vehicle fuel, or other inflammable petroleum products so acquired. It shall be unlawful for any person to use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which he is not specifically entitled by government regulations, for the purpose of obtaining any motor vehicle fuel or other inflammable petroleum products upon which the state tax has not been paid. [1961 c 15 § 82.36.250. Prior: 1957 c 247 § 12; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

82.36.260 Extension of time for filing exportation certificates or claiming exemptions. The director shall have authority to extend the time prescribed under this chapter for filing exportation certificates or claiming exemption for sales to the armed forces: *Provided*, That written request is filed with the director showing cause for failure to do so within or prior to the prescribed period. [1965 ex.s. c 79 § 11; 1961 c 15 § 82.36.260. Prior: 1957 c 247 § 13; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

82.36.270 Refund permit. Any person desiring to claim a refund shall obtain a permit from the department by application therefor on such form as the department shall prescribe, which application shall contain, among other things, the name and address of the applicant, the nature of the business and a sufficient description for identification of the machines or equipment in which the motor vehicle fuel is to be used, for which refund may be claimed under the permit. The permit shall bear a permit number and all applications for refund shall bear the number of the permit under which it is claimed. The department shall keep a record of all permits issued and a cumulative record of the amount of refund claimed and paid thereunder. Such permit shall be obtained before or at the time that the first application for refund is made under the provisions of this chapter. [1977 c 28 § 2; 1973 c 96 § 3; 1967 c 153 § 4; 1961 c 15 § 82.36.270. Prior: 1957 c 218 § 3; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.275 Refunds for urban transportation systems. Notwithstanding RCW 82.36.240, every urban passenger transportation system shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used, whether such vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such tax to the price of such fuel.

For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons, over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys (either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system) do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles are located: *Provided*, That no refunds authorized by this section shall be granted on fuel used by any urban transportation vehicle on any trip where any portion of said trip is more than fifteen road miles beyond the corporate limits of the city in which said trip originated. [1969 ex.s. c 281 § 27; 1967 c 86 § 1; 1965 c 135 § 1; 1963 c 187 § 1; 1961 c 117 § 1; 1961 c 15 § 82.36.275. Prior: 1959 c 298 § 1; 1957 c 292 § 1.]

Severability—1969 ex.s. c 281: See RCW 47.98.045.

82.36.280 Refunds for nonhighway use of fuel. Any person who uses any motor vehicle fuel for the purpose of operating any internal combustion engine not used on or in conjunction with any motor vehicle licensed to be operated over and along any of the public highways, and as the motive power thereof, upon which motor vehicle fuel excise tax has been paid, shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. No refund shall be made for motor vehicle fuel consumed by any motor vehicle as herein defined that is required to be registered and licensed as provided in chapter 46.16 RCW; and is operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed:

(1) In a motor vehicle owned by the United States that is operated off the public highways for official use;

(2) By auxiliary equipment not used for motive power, provided such consumption is accurately measured by a metering device that has been specifically approved by the department or is established by either of the following formulae:

(a) For fuel used in pumping fuel or heating oils by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the

rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: *Provided*, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of fuel oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or

(b) For fuel used in operating a power take-off unit on a cement mixer truck or load compactor on a garbage truck, claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck; and

(3) Before December 31, 1992, in a commercial vehicle as defined in RCW 46.04.140 or a farm vehicle as defined in RCW 46.04.181, if the motor vehicle fuel consumed contains nine and one-half percent or more by volume of alcohol and the commercial vehicle or farm vehicle is operated off the public highways of this state. [1985 c 371 § 5; 1980 c 131 § 5; 1972 ex.s. c 138 § 1; 1971 ex.s. c 36 § 1; 1969 ex.s. c 281 § 23; 1961 c 15 § 82.36.280. Prior: 1957 c 218 § 4; prior: 1951 c 263 § 1; 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Effective date—1972 ex.s. c 138: "The effective date of this act shall be July 1, 1972." [1972 ex.s. c 138 § 6.]

82.36.285 Refunds for transit services to elderly or handicapped persons by nonprofit transportation providers. A private, nonprofit transportation provider certified under chapter 81.66 RCW shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used to provide transit services for only elderly or handicapped persons, or both, whether the vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of the tax to the price of the fuel. [1983 c 108 § 3.]

82.36.290 Refunds for use in manufacturing, cleaning, dyeing. Every person who purchases and uses any motor vehicle fuel as an ingredient for manufacturing or for cleaning or dyeing or for some other similar purpose and upon which the motor vehicle fuel excise tax has been paid shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. [1961 c 15 § 82.36.290. Prior: 1957 c 218 § 5; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.300 Refunds on exported fuel. Every person who shall export any motor vehicle fuel for use outside of this state and who has paid the motor vehicle fuel excise tax upon such motor vehicle fuel shall be entitled to and shall receive a refund of the amount of the motor

vehicle fuel excise tax paid on each gallon of motor vehicle fuel so exported. [1963 ex.s. c 22 § 21; 1961 c 15 § 82.36.300. Prior: 1957 c 218 § 6; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.302 Refunds for employees of foreign governments. Every employee of a foreign government, including foreign diplomatic and consular officers, shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used, whether such vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such tax to the price of such fuel.

For the purposes of this section "employee of a foreign government" shall mean every person who is regularly employed by any foreign government who is not a citizen of the United States. The exemption hereby granted such employees shall be allowed only if the government represented grants an equivalent exemption to employees of the United States performing similar services in such country. No refund shall be allowed unless and until the claimant has complied with the provisions of RCW 82.36.310 and 82.36.330. [1967 ex.s. c 145 § 59.]

82.36.305 Refunds to dealer delivering fuel exclusively for marine use—Limitations—Supporting certificate. Any dealer who delivers motor vehicle fuel exclusively for marine use into the fuel tanks connected to the engine of any marine vessel (excluding any amphibious vehicle) owned or operated by the purchaser of the fuel, said dealer having paid the tax on such fuel levied or directed to be paid as provided in this chapter, either directly by the collection of such tax by the vendor from the dealer or indirectly by the adding of the amount of the tax to the price of such fuel, shall be entitled to and shall be refunded the amount of the tax so paid. The refund shall be applicable only if the person to whom the dealer sold the fuel holds a permit issued pursuant to the provisions of RCW 82.36.270 at the time of sale. Each invoice covering such sale shall have the statement, "Ex Washington Motor Vehicle Fuel Tax," clearly marked thereon.

In addition to the claim to be filed under RCW 82.36.310 the dealer shall also file a certificate supporting such refund in such form and detail as the director may require. The certificate shall contain a statement signed by the purchaser of the fuel to the effect that the fuel so purchased will be used solely for marine use. The dealer may either file a separate certificate obtained from the purchaser for each delivery of fuel thereto or he may file one certificate covering all deliveries made to such purchaser during any given calendar month. [1965 ex.s. c 79 § 12; 1961 c 15 § 82.36.305. Prior: 1957 c 218 § 16.]

82.36.306 Remedies for violation of RCW 82.36.305—Rules—Coloring of fuel exclusively for marine use, samples may be taken. If any person who

purchases motor vehicle fuel exclusive of tax under the provisions of RCW 82.36.305 uses or permits such fuel to be used for purposes other than marine use as set forth in this chapter, he shall immediately become liable for the motor vehicle fuel tax imposed thereon and shall for a period of five years thereafter become ineligible for any permit under RCW 82.36.270. The foregoing remedies shall be cumulative and no action taken pursuant thereto shall relieve any person from the penal provisions of this chapter.

The department is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms necessary for the enforcement of the provisions relating to such sales and use of motor vehicle fuel. This shall include authority to require distributors and dealers to color motor vehicle fuel so sold with a coloring matter to be prescribed and furnished without cost by the department. It shall be unlawful to use or to permit the use of the fuel so colored for any purpose other than that provided under RCW 82.36.305. The department, in order to ascertain whether the fuel so colored has been unlawfully used, may take samples of fuel from fuel tanks of motor vehicles and conduct such other examinations as it may deem necessary. [1973 c 96 § 4; 1961 c 15 § 82.36.306. Prior: 1957 c 218 § 17.]

82.36.310 Claim of refund. Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by the original invoice or invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director: *Provided*, That in the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit in lieu thereof a duplicate copy of such invoice certified by the vendor, but no payment of refund based upon such duplicate invoice shall be made until after expiration of such statutory period specified in RCW 82.36.330 for filing of refund applications.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, or if it is a corporation, by some proper officer thereof. [1965 ex.s. c 79 § 13; 1961 c 15 § 82.36.310. Prior: 1957 c 218 § 7; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.320 Information may be required. Any person claiming refund on motor vehicle fuel used other than in motor vehicles as herein provided, and any person purchasing motor vehicle fuel from a dealer who is claiming refund on account of the sale of such fuel under RCW

82.36.305 may be required by the director to also furnish information regarding the amount of motor vehicle fuel purchased from other sources or for other purposes during the period reported for which no refund is claimed. [1961 c 15 § 82.36.320. Prior: 1957 c 218 § 8; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.330 Payment of refunds—Penalty. Upon the approval of the director of the claim for refund, the state treasurer shall draw a warrant upon the state treasury for the amount of the claim in favor of the person making such claim and the warrant shall be paid from the excise tax collected on motor vehicle fuel: *Provided*, That the state treasurer shall deduct from each marine use refund claim an amount equivalent to one cent per gallon and shall deposit the same in the coastal protection fund created by RCW 90.48.390. Applications for refunds of excise tax shall be filed in the office of the director not later than the close of the last business day of a period thirteen months from the date of purchase of such motor fuel, and if not filed within this period the right to refund shall be forever barred, except that such limitation shall not apply to claims for loss or destruction of motor vehicle fuel as provided by the provisions of RCW 82.36.370. Any person or the member of any firm or the officer or agent of any corporation who makes any false statement in any claim required for the refund of excise tax, as provided in this chapter, or who collects or causes to be repaid to him or to any other person any such refund without being entitled to the same under the provisions of this chapter shall be guilty of a gross misdemeanor. [1971 ex.s. c 180 § 9; 1965 ex.s. c 79 § 14; 1961 c 15 § 82.36.330. Prior: 1957 c 218 § 9; prior: 1955 c 90 § 1; 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.48.907.

Coastal protection fund: RCW 90.48.390 and 90.48.400.

Definitions: RCW 90.48.315.

Rules and regulations: RCW 90.48.380, 90.48.410, and 90.48.907.

82.36.335 Distributor may obtain credit on tax in lieu of collection and refund. In lieu of the collection and refund of the tax on motor vehicle fuel used by a distributor in such a manner as would entitle a purchaser to claim refund under this chapter, credit may be given the distributor upon his tax return in the determination of the amount of his tax. [1961 c 15 § 82.36.335. Prior: 1957 c 218 § 14.]

82.36.340 Examination of books and records. The director may in order to establish the validity of any claim for refund require the claimant, or, in the case of a dealer filing a claim for refund as provided by RCW 82.36.305, the person to whom such fuel was sold, to furnish such additional proof of the validity of the claim

as the director may determine, and may examine the books and records of the claimant or said person to whom the fuel was sold for such purpose. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the director may require. The failure to maintain such records or to accede to a demand for an examination of such records may be deemed by the director as sufficient cause for denial of all right to the refund claimed on account of the transaction in question. [1961 c 15 § 82.36.340. Prior: 1957 c 218 § 10; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.350 Fraudulent invoices—Penalty. If upon investigation the director determines that any claim has been supported by an invoice or invoices fraudulently made or altered in any manner to support the claim, he may suspend the pending and all further refunds to any such person making the claim for a period not to exceed one year. [1961 c 15 § 82.36.350. Prior: 1957 c 218 § 11; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.360 Separate invoices for nontaxed fuel. When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax, the seller of such motor vehicle fuel shall make and deliver at the time of sale separate invoices for each purchase on invoice forms approved by the director showing the name and address of the seller, the name and address of the purchaser, the number of gallons of motor vehicle fuel so sold, and the date of such purchase. All invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. [1961 c 15 § 82.36.360. Prior: 1957 c 218 § 12; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.370 Refunds for fuel lost or destroyed through fire, flood, leakage, etc. (1) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel which is lost or destroyed, while applicant shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(2) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel of five hundred gallons or more which is lost or destroyed, while applicant shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage or unknown causes: *Provided*, That the director shall be notified in writing as to the full circumstances surrounding such loss or destruction and the amount of the loss or destruction within thirty days from the day of discovery of such loss or destruction.

(3) Recovery for such loss or destruction under either subsection (1) or (2) must be susceptible to positive proof thereby enabling the director to conduct such investigation and require such information as he may deem necessary.

In the event that the director is not satisfied that the fuel was lost or destroyed as claimed, wherefore required information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, he may deem as sufficient cause the denial of all right relating to the refund or credit for the excise tax on motor vehicle fuel alleged to be lost or destroyed. [1967 c 153 § 5; 1965 ex.s. c 79 § 15; 1961 c 15 § 82.36.370. Prior: 1957 c 218 § 13; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

82.36.375 Time limitation on erroneous payment credits or refunds and notices of additional tax. Unless otherwise provided any credit for erroneous overpayment of tax made by a distributor to be taken on a subsequent return or any claim of refund for tax erroneously overpaid by a distributor, pursuant to the provisions of RCW 82.36.090, must be so taken within three years after the date on which the overpayment was made to the state. Failure to take such credit or claim such refund within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayment hereunder.

Except in the case of a fraudulent report or neglect or refusal to make a report every notice of additional tax, penalty or interest assessed hereunder shall be served on the distributor within three years from the date upon which such additional taxes became due. [1965 ex.s. c 79 § 16.]

82.36.380 Violations—Penalty. Any person failing to pay the tax as herein provided, or violating any of the other provisions of this chapter, or making any false statement, or concealing any material fact in any report, record, affidavit, or claim provided for herein, shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [1961 c 15 § 82.36.380. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

82.36.390 Diversion of export fuel—Penalty. Any person who, through false statement, trick, or device, or otherwise, obtains motor vehicle fuel for export and fails to export the same or any portion thereof, or causes such motor vehicle fuel or any thereof not to be exported, or who diverts said motor vehicle fuel or any thereof or who causes it to be diverted from interstate or foreign transit begun in this state, or who unlawfully returns such fuel or any thereof to this state and sells or uses it or any thereof in this state or causes it or any thereof to

be used or sold in this state and fails to notify the distributor from whom such motor vehicle fuel was originally purchased of his act, and any distributor or other person who conspires with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use with intent to avoid any of the taxes imposed by this chapter, shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Each shipment illegally diverted or illegally returned shall be a separate offense, and the unit of each shipment shall be the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case or one can. [1961 c 15 § 82.36.390. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

82.36.400 Other offenses—Penalties. It shall be unlawful for any person to commit any of the following acts:

(1) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel distributor's license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(2) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel distributor's license issued to the person lending it or permitting it to be used;

(3) To display or to represent as one's own any motor vehicle fuel distributor's license not issued to the person displaying the same;

(4) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(5) To refuse to permit the director, or any agent appointed by him in writing, to examine his books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

Except as otherwise provided, any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both. [1971 ex.s. c 156 § 3; 1967 c 153 § 6; 1961 c 15 § 82.36.400. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

82.36.410 Revenue to motor vehicle fund. All moneys collected by the director shall be transmitted forthwith to the state treasurer, together with a statement showing whence the moneys were derived, and shall be by him credited to the motor vehicle fund. [1973 c 95 § 5; 1961

c 15 § 82.36.410. Prior: 1933 c 58 § 20; RRS § 8327-20.]

82.36.415 Refund to aeronautics account. At least once each fiscal year, the director shall request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund shall be considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director shall also remit from the motor vehicle fund the taxes required by RCW 82.12.0256(3)(c) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with RCW 82.12.0256(3)(c) shall not exceed the unclaimed refunds. [1987 c 220 § 4.]

Severability—1987 c 220: See note following RCW 47.68.230.

82.36.420 Disposition of fees, fines, penalties. Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter shall be paid to the current expense fund of the county wherein collected and the remaining fifty percent shall be paid into the motor vehicle fund of the state: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees and penalties collected by the director under the penalty provisions of this chapter shall be paid into the motor vehicle fund. [1987 c 202 § 245; 1969 ex.s. c 199 § 40; 1961 c 15 § 82.36.420. Prior: 1933 c 58 § 21; RRS § 8327-21.]

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

82.36.430 Enforcement. The director is charged with the enforcement of the provisions of this chapter. State patrolmen shall aid the director in the enforcement of this chapter and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on view, without writ, rule, order, or process, any person known to have violated any of the provisions of this chapter. [1961 c 15 § 82.36.430. Prior: 1933 c 58 § 22; RRS § 8327-22.]

82.36.435 Enforcement and administration—Rule-making authority. The department shall enforce the provisions of this chapter and may adopt and enforce reasonable rules relating to the administration and enforcement thereof. [1981 c 342 § 5.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.36.440 State preempts tax field. The tax herein levied is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county,

township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of motor vehicle fuel: *Provided*, That nothing in this section or chapter 82.36 RCW shall be construed to prohibit in any manner the imposition of a city tax upon motor vehicle fuel pursuant to *RCW 82.39.010. [1979 ex.s. c 181 § 5; 1961 c 15 § 82.36.440. Prior: 1933 c 58 § 23; RRS § 8327-23.]

*Reviser's note: RCW 82.39.010 expired on June 30, 1985.

Effective date—1979 ex.s. c 181: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 181 § 10.]

Severability—1979 ex.s. c 181: "If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 181 § 8.]

Chapter 82.37

MOTOR VEHICLE FUEL IMPORTER TAX ACT

Sections

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82.37.920	Effective date—1963 ex.s. c 22.

82.37.010 Declaration of purpose—Use of revenues. It is hereby declared to be the purpose of this chapter to levy a tax on those importing gasoline into the state of Washington in the fuel supply tanks of commercial motor vehicles being used on the highways of this state for commercial purposes as a just and reasonable contribution to the cost of constructing, maintaining, and policing such highways incident to the use thereof by such persons and to the end that said highway users shall pay to the state of Washington an equal amount in taxes as is paid by other commercial highway users who use gasoline on which the motor vehicle fuel excise tax has been paid to this state. The revenues collected shall

be used to partially defray the cost of construction, reconstruction, and maintenance of the public highways and the regulation of traffic thereon, and for no other purposes. [1963 ex.s. c 22 § 1.]

Reviser's note: "This act" (1963 ex.s. c 22) is herein translated to read "this chapter". The act also amended RCW 82.36.220 and 82.36.300.

82.37.020 Definitions. The following words, terms, and phrases when used in this chapter have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Commercial motor vehicle" means any motor vehicle used or maintained for the transportation of persons for hire, or any vehicle designed, used or maintained primarily for the transportation of commodities, merchandise, produce, freight and animals.

(2) "Motor carrier" means and includes a natural person, individual, partnership, firm, association, or private or public corporation, which is engaged in interstate commerce and which operates or causes to be operated on any highway in this state any commercial motor vehicle.

(3) "Operations", when applied to a motor carrier, means operations of all commercial motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated into or out of or through this state.

(4) "Motor vehicle fuel" means gasoline or any other inflammable liquids, by whatsoever name such liquid may be known or sold, the use of which is as fuel for the propulsion of commercial motor vehicles except fuel as defined in chapter 82.38 RCW.

(5) "Use" means and includes the consumption of motor vehicle fuel by any motor carrier in a commercial motor vehicle for the propulsion thereof upon the public highways of this state.

(6) "Motor vehicle fuel importer for use" means and includes any motor carrier importing motor vehicle fuel into this state in the fuel supply tank or tanks of any commercial motor vehicle for use in propelling said vehicle upon the highways of this state.

(7) "Public highways" means and includes every way, lane, road, street, boulevard, and every way or place open as a matter of right to public vehicular travel both inside and outside the limits of cities and towns.

(8) "Director" means the director of licensing. [1983 c 3 § 223; 1979 c 158 § 225; 1965 c 67 § 1; 1963 ex.s. c 22 § 2.]

82.37.030 Tax imposed—Rate to be computed. In consideration of the use of the public highways of this state, motor carriers who import motor vehicle fuel into the state of Washington in the fuel supply tank or tanks of commercial motor vehicles for use in propelling those vehicles on the highways are subject to a tax for such use of the highways as hereinafter provided. A tax at the rate computed in the manner provided in RCW 82.36-.025 per gallon is hereby imposed upon every motor carrier measured and determined by the number of gallons

of motor vehicle fuel so imported and actually used by the motor carrier in its operations within this state during the fiscal year for which such rate is applicable. [1983 1st ex.s. c 49 § 29; 1977 ex.s. c 317 § 4; 1967 ex.s. c 83 § 4; 1963 ex.s. c 22 § 3.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

82.37.040 Report and remittance by carriers. Motor carriers may file with the director a report at any time, provided the reporting period includes a full calendar month or months, upon a form prescribed and furnished by the director, showing the amount of motor vehicle fuel imported for use within this state and such other information as the director may require to carry out the purpose of this chapter. Each report shall be accompanied by a remittance payable to the state treasurer for the amount of tax due and payable hereunder.

Motor carriers who voluntarily file the report as in this section provided, are not to include commercial motor vehicles used exclusively in intrastate operations in this state for which tax paid motor vehicle fuel is purchased or received entirely within this state. [1963 ex.s. c 22 § 4.]

82.37.050 Additional assessment—Notice. If the director is not satisfied with the report filed or amount of tax paid to the state by any motor carrier pursuant to the requirements of this chapter, he may make an additional assessment of tax due from such carrier based upon the best information available to him. The director shall give to the carrier written notice of any such added amount of tax determined to be due under the provisions of this section. Each such notice may be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid, addressed to the carrier at his address as the same appears in the records of the director. [1963 ex.s. c 22 § 5.]

82.37.060 Computation and collection of tax—Deduction and credit for fuel purchased or received in Washington—Refunds. The tax imposed hereunder, with respect to which tax liability hereunder accrues, shall be collected by the assessment of tax through periodic audit examination of the carrier's records, pursuant to the provisions of RCW 82.37.080: *Provided*, That the tax imposed hereunder, with respect to which tax liability hereunder accrues, may be paid by the motor carrier before such time of audit, as provided by the provisions of RCW 82.37.040. The tax shall be computed and paid, multiplied by the tax rate imposed hereunder, on the total number of gallons of motor vehicle fuel used by such motor carrier within this state during the taxable period of the carrier's operations on the public highways of this state.

Every motor carrier subject to the tax shall be entitled to deduct from the total number of gallons of motor vehicle fuel used in Washington, to determine the number of gallons of motor vehicle fuel upon which the tax levied by this chapter is to be computed and paid, the number of gallons of motor vehicle fuel shown to have been purchased or received in Washington for use in its operations either within or without this state on which the tax levied by chapter 82.36 RCW has been paid by such carrier to this state. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the director shall be furnished by each such carrier taking the deduction herein allowed.

When the amount of the credit herein provided to which any motor carrier is entitled for the month or months that the report covers exceeds the amount of the tax for which such carrier is liable for the same month or months, such excess may under regulations of the director be allowed as a credit on the tax for which such carrier would be otherwise liable for another month or months that a report covers; or upon application within five years from the last day of the month in which the fuel was used, duly verified and presented, in accordance with regulations promulgated by the director and supported by such evidence as may be satisfactory to the director, such excess may be refunded pursuant to the provisions of RCW 82.37.140. [1965 c 67 § 2; 1963 ex.s. c 22 § 6.]

82.37.070 Exemptions. The tax levied by this chapter shall not apply to motor vehicle fuel imported into and used on the public highways of this state by:

(1) Persons operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons, regardless of whether for hire or compensation or not for hire or compensation.

(2) Motor vehicle fuel used in vehicles owned and operated by any department, board, bureau, agency, or taxing area or any other agency of the federal government, or by any state and political subdivision thereof. [1963 ex.s. c 22 § 7.]

82.37.080 Audit—Assessment of tax—Delinquency, penalty and interest. Whenever it is established by audit of the motor carrier's records and books that such carrier subject to the imposition of the tax herein did not purchase sufficient fuel within this state commensurate with the miles traveled on public highways of this state, the director or his duly appointed representative is hereby authorized to make an assessment of the tax with respect to that amount of motor vehicle fuel consumed on the public highways of this state in excess of the amount of motor vehicle fuel purchased in this state.

Any motor carrier against whom a tax assessment is made under this section shall pay to the director the amount of the tax assessment within thirty days after service upon the carrier of notice thereof. Every assessment made by the director shall become due and payable at the time it becomes final, and if not paid to the

director when due and payable there shall be added thereto a penalty of ten percent of the amount of the tax assessment and interest at the rate of one-half of one percent per month, or a fraction thereof, from the time said tax became due until the date of payment. Any notice required by this section shall be served in the manner prescribed by RCW 82.37.050. [1963 ex.s. c 22 § 8.]

82.37.090 Delinquency—Lien of tax—Notice. If any motor carrier liable for the payment of the tax assessment fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such carrier in the prosecution of business or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof.

The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the director has filed notice of such lien in the office of the county auditor of the county in which the principal place of business of the taxpayer is located.

The auditor, upon presentation of a notice of lien, and without requiring the payment of any fee, shall file and index it in the manner now provided for deeds and other conveyances, except that he shall not be required to include, in the index, any description of the property affected by the lien. The lien shall continue until the amount of the tax, together with any penalties and interest subsequently accruing thereon, is paid. The director may issue a certificate of release of lien when the amount of the tax, together with any penalties and interest subsequently accruing thereon, has been satisfied, and such release may be recorded with the auditor of the county in which the notice of lien has been filed.

The director shall furnish to any person applying therefor a certificate showing the amount of all liens for motor vehicle fuel tax, penalties, and interest that may be of record in the files of the director against any motor carrier under the provisions of this chapter. [1963 ex.s. c 22 § 9.]

82.37.100 Delinquency—Collection by civil action. Whenever any motor carrier is delinquent in the payment of any obligation hereunder, the director may transmit notice of such delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from such motor carrier. In any suit brought to enforce the rights of the state hereunder, a certificate of the tax assessment and penalty shall be prima facie evidence that the motor carrier therein named is indebted to the state in the

amount of the tax and penalty therein stated. [1963 ex.s. c 22 § 10.]

82.37.110 Remedies cumulative. The foregoing remedies of the state shall be cumulative, and no action by the director shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [1963 ex.s. c 22 § 11.]

82.37.120 Reassessment procedure. Any motor carrier against whom a tax assessment is made under the provisions of RCW 82.37.080 may petition for a reassessment thereof within thirty days after service upon the carrier of notice thereof. If such petition is not filed within such thirty day period, the amount of the tax assessment becomes final at the expiration thereof.

An assessment of tax made by the director pursuant to the provisions of RCW 82.37.080 shall be presumed to be correct, and in any case where the validity of the assessment is questioned, the burden, except as to proof of alleged fraud, shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive, as the case may be. Except in the case of a fraud, no assessment shall be made for any period for which the motor carrier's records are no longer required to be kept or maintained.

If a petition for reassessment is filed within the thirty day period above provided, the director shall reconsider the assessment and, if the motor carrier has so requested in his petition, shall grant such carrier an oral hearing and give the carrier ten days' notice of the time and place thereof. The director may continue the hearing from time to time. The decision of the director upon a petition for reassessment shall become final sixty days after service upon the motor carrier of notice thereof. Any notice required by this section shall be served in the manner prescribed by RCW 82.37.050. [1963 ex.s. c 22 § 12.]

82.37.130 Notice of assessment—Time limitation. Every notice of assessment of tax proposed to be assessed hereunder shall be served on the motor carrier within five years from the date upon which such assessed taxes became due. [1963 ex.s. c 22 § 13.]

82.37.140 Exported fuel—Refund procedure. Every motor carrier subject to the tax hereby imposed who has paid any tax on motor vehicle fuel levied or directed to be paid by chapter 82.36 RCW, either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid by him, if such motor carrier has purchased and exported such fuel in the fuel supply tank or tanks of a commercial motor vehicle and has used such fuel to operate said vehicle upon the highways of another state. Motor vehicle fuel carried from this state in the fuel supply tank or

tanks of a commercial motor vehicle is deemed to be exported from this state. The refund rate shall be the current rate per gallon of the then current motor vehicle fuel tax of this state.

Any motor carrier claiming a refund for motor vehicle fuel exported as in this section provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim in all cases shall be made over the signature of the claimant, and shall state the total amount of such fuel for which he is entitled to be reimbursed under this section.

The director or his duly appointed representative shall have the right, in order to establish the validity of any claim for refund, as provided herein, to examine the books and records of such claimant. The records must be sufficient in scope and detail to substantiate the accuracy of the claim, and the director or his duly appointed representative shall have full authority to determine the adequacy of such records and books and the amount of the refund due the claimant from the taxes collected on motor vehicle fuel.

All claims for refunds based upon exportation of motor vehicle fuel from this state in the fuel supply tank or tanks of a commercial motor vehicle must be filed with the director before the expiration of five years from the last day of the month in which the fuel was used. [1965 c 67 § 3; 1963 ex.s. c 22 § 14.]

82.37.145 Duplicate, erroneous or illegal collections—Credits—Refunds. If the director determines any amount of tax has been paid more than once or has been erroneously or illegally collected, or where there is an erroneous payment involving or resulting from mere clerical error on the part of the motor carrier in making such report, he shall credit such amount against any amounts then due from the carrier under this chapter and shall credit any balance to the carrier to be allowed as a credit on the tax for which such carrier would be otherwise liable for another month or months that a report covers. A motor carrier upon application may be allowed refund of any credit balance, but no such refund shall be allowed unless such carrier presents to the director a claim upon forms to be provided by the director with such information as the director shall require filed with the director within five years from the date of overpayment. Every such claim shall be signed by the person claiming the refund.

Failure to file such claim within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayments hereunder. [1965 c 67 § 5.]

82.37.150 Records required of motor carriers. Each motor carrier under this chapter shall make and retain for a period of five years records of gallons of motor vehicle fuel purchased or received, mileage traveled within and without this state, commercial motor vehicles owned, operated, leased, or operated under any other form of contract, and other pertinent papers that are

reasonably necessary to substantiate any such tax liability imposed by this chapter.

Each motor carrier under this chapter shall be required to retain for five years all original purchase or sales invoices reflecting purchases of motor vehicle fuels in this state, and such invoices shall be identified by the name and station address of the seller, stamped or credit card with credit card imprint and showing the date of sale, the name and address of the purchaser, the company unit number or motor vehicle license number of the power unit, the type or kind of fuel sold, the number of gallons sold, and the signature of the purchaser. [1965 c 67 § 4; 1963 ex.s. c 22 § 15.]

82.37.160 Examinations and investigations. The director or his duly authorized representative may examine, during the usual business hours of the day, the books, records, papers, and equipment of any motor carrier and investigate the disposition which any such carrier or other person makes of fuel to determine whether the tax imposed by this chapter has been paid.

Every such motor vehicle fuel importer for use not maintaining records in this state so that an audit of such records may be made by the director or his duly authorized representative shall be required to make the necessary records available to the director at his request and at his designated office within this state; or, in lieu thereof, the director or his duly authorized representative shall proceed to any out-of-state office at which the records are prepared and maintained to make such examination. [1967 ex.s. c 89 § 7; 1963 ex.s. c 22 § 16.]

82.37.170 Rules and regulations—Secrecy enjoined, exception. The director is hereby empowered with full authority to promulgate rules and regulations that are necessary to the administration of this chapter.

It shall be unlawful for the director, or any person having an administrative duty under this chapter, to divulge or to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any motor carrier or other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law: *Provided*, That the director may, upon request from the officials to whom are entrusted the enforcement of the motor vehicle fuel importer use tax law of any other state or any political subdivision, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he may have relative to the mileage traveled, fuel imported and used, or any other disposition of motor vehicle fuel imported and used by such motor carrier, provided such other state or states furnish like information to this state. [1963 ex.s. c 22 § 17.]

82.37.175 Administration, collection, and enforcement of taxes pursuant to chapter 82.41 RCW. For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to an agreement under chapter 82.41 RCW, chapter 82.41 RCW shall control to the extent of any conflict. [1982 c 161 § 13.]

82.37.180 Unlawful practices—Penalties for violation of chapter. It shall be unlawful for any person to commit any of the following acts:

(1) To defraud the state or evade the payment of any tax, penalty, or interest which shall be due pursuant to the provisions of this chapter;

(2) To use a false or fictitious name or give a false or fictitious address in any form required under the provisions of this chapter, or otherwise commit a fraud in any record or report;

(3) To refuse to permit the director, or any representative appointed by him in writing, to examine his books, records, papers, or other equipment pertaining to the importation and use of motor vehicle fuel within this state;

(4) To fail or refuse to keep proper books, records, or papers as shall be required by the provisions of this chapter;

(5) To engage in any act or activity with the intent to evade payment to, or prevent collection by, the state of the tax hereby imposed; and any such act or activity shall also render the person or persons liable, jointly or severally, for such unpaid tax, with penalties and interest prescribed by the provisions of this chapter;

(6) To make a false statement in connection with any claim for refund, or to knowingly collect or attempt to collect or cause to be repaid to himself or to any other person any refund of any amount paid to the state hereunder without being entitled to the same.

Any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both. [1963 ex.s. c 22 § 18.]

82.37.190 Disposition of revenues. All moneys collected by the director shall be transmitted forthwith to the state treasurer, together with a statement showing whence the moneys were derived, and shall be by him credited to the motor vehicle fund.

The proceeds of the motor vehicle fuel importer use tax imposed by chapter 82.37 RCW shall be distributed in the manner provided for the distribution of the motor vehicle fuel tax in RCW 82.36.020, as amended in section 2 of chapter 124, Laws of 1973 first extraordinary session. [1974 ex.s. c 28 § 2. Prior: 1973 1st ex.s. c 124 § 3; 1973 c 95 § 6; 1967 ex.s. c 83 § 5; 1963 ex.s. c 22 § 19.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

82.37.900 Severability—1963 ex. s. c 22. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1963 ex.s. c 22 § 22.]

82.37.910 Short title. This chapter shall be known and may be cited as the "Motor Vehicle Fuel Importer Use Tax Act". [1963 ex.s. c 22 § 23.]

82.37.920 Effective date—1963 ex.s. c 22. This chapter shall take effect July 1, 1963. [1963 ex.s. c 22 § 24.]

Chapter 82.38

SPECIAL FUEL TAX ACT

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82.38.010 Statement of purpose. The purpose of this chapter is to supplement the Motor Vehicle Fuel Tax Act, chapter 82.36 RCW, by imposing a tax upon all fuels not taxed under said Motor Vehicle Fuel Tax Act used for the propulsion of motor vehicles upon the highways of this state. [1979 c 40 § 1; 1971 ex.s. c 175 § 2.]

82.38.020 Definitions. As hereinafter used in this chapter:

(1) "Person" means every natural person, fiduciary, association or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(2) "Department" means the department of licensing.

(3) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(4) "Motor vehicle" means every self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(5) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW.

(6) "Bulk storage" means the placing of special fuel by a special fuel dealer into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Special fuel dealer" means any person engaged in the business of delivering special fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him, or into bulk storage facilities for subsequent use in a motor vehicle. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person purchasing special fuel into bulk storage without payment of the special fuel tax for subsequent use in a motor vehicle, or any person engaged in interstate commercial operation of motor vehicles any part of which is within this state.

(9) "Special fuel supplier" means any person engaged in the business of selling special fuel where delivery thereof is made other than, or in addition to, the manner prescribed under the definition of "special fuel dealer", but does not include any person making retail sales of special fuel exclusively for heating purposes.

(10) "Service station" means any location at which fueling of motor vehicles is offered to the general public.

(11) "Unbonded service station" means any service station at which an unbonded special fuel dealer regularly makes sales of special fuel by means of delivery thereof into the fuel supply tanks of motor vehicles.

(12) "Bond" means: (a) A bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the provisions of chapter 48.28 RCW which bond shall be payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations of such dealer, arising out of this chapter; or (b) a deposit with the state treasurer by the special fuel dealer or special fuel user, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Washington, or any county of said state, of an actual market value not less than the amount so fixed by the department.

(13) "Lessor" means any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

(14) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(15) "Standard pressure and temperature" means fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit. [1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

82.38.030 Tax imposed—Variable rate to be computed—Collection. (1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 per gallon or each one hundred cubic feet of compressed natural gas measured at standard pressure and temperature on the use of special fuel in any motor vehicle operated upon the highways of this state during the fiscal year for which such rate is applicable.

(2) The tax shall be collected by the special fuel dealer and shall be paid over to the department as hereinafter provided: (a) With respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles or into storage facilities used for the fueling of motor vehicles at unbonded service stations in this state; or (b) in all other transactions where the purchaser is not the holder of a valid special fuel license issued pursuant to this chapter allowing the purchase of untaxed special fuel.

(3) The tax shall be paid over to the department by the special fuel user as hereinafter provided with respect to the taxable use of special fuel upon which the tax has not previously been imposed.

It is expressly provided that delivery of special fuel may be made without collecting the tax otherwise imposed, when such deliveries are made by a bonded special fuel dealer to special fuel users who are authorized by the department as hereinafter provided, to purchase fuel without payment of tax to the bonded special fuel dealer. [1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977

ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.38.040 Authorization of purchase without payment to bonded dealer. The department may issue written authorization to a special fuel user to purchase fuel from a bonded special fuel dealer designated by the special fuel user without payment of the tax to the bonded special fuel dealer when the department finds (1) that the special fuel user consistently is using the fuel in vehicles which are operated partly without this state or off the highways of this state; (2) that to require collection of the tax from the special fuel user by the bonded special fuel dealer would cause consistently recurring overpayments of the tax; and (3) that the revenue of the state with respect to the tax liability of such a special fuel user is adequately secured. Such authorization may be revoked when any one of the above conditions no longer obtains. The delivery of special fuel may be made without collecting the tax otherwise imposed when deliveries are made into vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks, on invoices showing the vehicle unit or license number and such other information as may be prescribed by the department. [1973 1st ex.s. c 156 § 2; 1971 ex.s. c 175 § 5.]

82.38.050 Tax liability on leased motor vehicles. Except as otherwise provided in this chapter, every special fuel user shall be liable for the tax on special fuel used in motor vehicles leased to him for more than thirty days and operated on the highways of this state to the same extent and in the same manner as special fuel used in his own motor vehicles and operated on the highways of this state: *Provided*, That a lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the special fuel user when he supplies or pays for the special fuel consumed in such vehicles, and such lessor may be issued a license as a special fuel user when application and bond have been properly filed with and approved by the department for such license. Any lessee may exclude motor vehicles of which he is lessee from his reports and liabilities pursuant to this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid special fuel user's license.

Every such lessor shall file with his application for a special fuel user's license one copy of the lease form or service contract he enters into with the various lessees of his motor vehicles. When the special fuel user's license has been secured, such lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of such license to be carried in the cab compartment of said motor vehicle and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name

of the lessee. Such lessor shall be responsible for the proper use of such photocopy of said license issued and its return to him with the motor vehicle to which it is assigned.

The lessor shall be responsible for fuel tax licensing and reporting, as required by this chapter, on the operation of all motor vehicles leased to others for thirty days or less. [1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

82.38.060 Tax computation on mileage basis. In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, it shall be prima facie presumed that not less than one gallon of special fuel was consumed for every four miles traveled. [1971 ex.s. c 175 § 7.]

82.38.070 Refunds for worthless accounts receivable. A special fuel dealer shall be entitled, under rules and regulations prescribed by the department, to a credit of the tax paid over to the department on those sales of special fuel for which the dealer has received no consideration from or on behalf of the purchaser, which have been declared by the dealer to be worthless accounts receivable, and which have been claimed as bad debts for federal income tax purposes. The amount of the tax refunded shall not exceed the amount of tax imposed by this chapter on such sales, less an amount computed by applying the current state retail sales tax rate to the difference between the total purchase price of such sales and the amount of tax imposed on such sales by this chapter. If a refund has been granted under this section, any amounts collected for application against the accounts on which such a refund is based shall be reported with the first return filed after such collection, and the amount of refund received by the dealer based upon the collected amount shall be returned to the department. In the event the refund has not been paid, the amount of the refund requested by the dealer shall be adjusted by the department to reflect the decrease in the amount on which the claim is based. The department may require the dealer to submit periodical reports listing accounts which are delinquent for ninety days or more. [1971 ex.s. c 175 § 8.]

82.38.075 Natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device.

In order to encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 shall be imposed upon the use of natural gas as defined in this chapter or on liquified petroleum gas, commonly called propane, which is used in any motor vehicle, as defined in RCW 46.04.320, which shall be based upon the following schedule as adjusted by the formula set out below:

VEHICLE TONNAGE (GVW)	FEE
0 – 6,000	\$ 45
6,001 – 10,000	\$ 45
10,001 – 18,000	\$ 80
18,001 – 28,000	\$110
28,001 – 36,000	\$150
36,001 and above	\$250

To determine the actual annual license fee imposed by this section for a registration year, the appropriate dollar amount set out in the above schedule shall be multiplied by the motor vehicle fuel tax rate in cents per gallon as established by RCW 82.36.025 effective on July 1st of the preceding calendar year and the product thereof shall be divided by 12 cents.

The department of licensing, in addition to the foregoing fee, shall charge a further fee of five dollars as a handling charge for each license issued.

The director of licensing shall be authorized to prorate the vehicle tonnage fee so that the annual license required by this section will correspond with the staggered vehicle licensing system.

A decal or other identifying device issued upon payment of these annual fees shall be displayed as prescribed by the department as authority to purchase this fuel.

Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device as provided in this section.

Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

Any person selling or dispensing natural gas or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter. [1983 c 212 § 1; 1981 c 129 § 1; 1979 c 48 § 1; 1977 ex.s. c 335 § 1.]

Effective date—1979 c 48: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 c 48 § 2.]

Effective date—1977 ex.s. c 335: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 335 § 2.]

82.38.080 Exemptions. There is exempted from the tax imposed by this chapter, the use of fuel for: (1) street and highway construction and maintenance purposes in motor vehicles owned and operated by the state

of Washington, or any county or municipality; (2) publicly owned fire fighting equipment; (3) special mobile equipment as defined in RCW 46.04.552; (4) power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by either of the following formulae: (a) pumping propane, or fuel or heating oils by a power take-off unit on a delivery truck, at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: *Provided*, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or (b) operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; (5) motor vehicles owned and operated by the United States government; (6) heating purposes; (7) moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle; (8) transit services for only elderly or handicapped persons, or both, by a private, nonprofit transportation provider certified under chapter 81.66 RCW; and (9) notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: *Provided*, That no refunds or credits shall be granted on fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated. [1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.082 Exemptions—Special fuel used in logging operations on federal land. There is exempted from the tax imposed by this chapter the use of special fuel

for the operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway. [1987 c 294 § 1.]

82.38.085 Exemptions—Alcohol for use as fuel—Tax credit—Expiration of section. Alcohol of any proof that is sold in this state for use as fuel in motor vehicles is exempt from the special fuel tax under this chapter. In addition, a tax credit of sixty percent of the tax rate imposed by RCW 82.38.030 shall be given for every gallon of alcohol used in an alcohol–special fuel blend which contains at least nine and one-half percent or more by volume of alcohol: *Provided*, That in no case may the tax credit claimed be greater than the tax due on the special fuel portion of the blended fuel.

This section shall expire on December 31, 1992. [1985 c 371 § 6; 1981 c 342 § 7; 1980 c 131 § 4.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.38.086 Intent—Reflection of tax credit in price. To encourage the production and use of alcohol as an alternative motor fuel, it is the intent of the legislature that the tax credit provided in RCW 82.38.085 be reflected in the retail price of alcohol blended fuels to make these fuels competitive with other fuels. [1981 c 342 § 6.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.38.090 Special fuel dealers', special fuel suppliers', and special fuel users' licenses—Collection of tax. It shall be unlawful for any person to act as a special fuel dealer, a special fuel supplier or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's, a special fuel supplier's or a special fuel user's license issued to him by the department. A special fuel supplier's license authorizes a person to sell special fuel without collecting the special fuel tax to other suppliers and dealers holding valid special fuel licenses.

A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user without collecting the special fuel tax. Special fuel dealers and suppliers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license must collect the special fuel tax

at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase unless the purchaser has specific written authorization from the department as provided in RCW 82.38.040 or the purchase is made from an unattended keylock metered pump, cardrol, or such similar dispensing devices. Persons utilizing special fuel for heating purposes only are not required to be licensed. [1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

82.38.100 Trip permits. (1) Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit in lieu of a special fuel user's license required in RCW 82.38-.090 and 82.38.120 which shall be good for a period of three consecutive days beginning and ending on the dates specified on the face of the permit issued, and only for the vehicle for which it is issued.

(2) Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) For each permit issued, there shall be collected a filing fee of one dollar, an administrative fee of ten dollars, and an excise tax of nine dollars. Such fees and tax shall be in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state and no report of mileage shall be required with respect to such vehicle. Trip permits will not be issued if the applicant has outstanding fuel taxes, penalties or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed.

(4) Blank permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) All fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the special fuel tax collected under

this chapter and shall not be subject to exchange, refund, or credit. [1983 c 78 § 1; 1979 c 40 § 6; 1973 1st ex.s. c 156 § 3; 1971 ex.s. c 175 § 11.]

82.38.110 Application for license—Bond—Requirements. Application for a special fuel dealer's license, special fuel supplier's license or a special fuel user's license, shall be made to the department. The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in RCW 82.38.020, in such form as the department may require, to secure his compliance with this chapter, and the payment of any and all taxes, interest and penalties due and to become due hereunder. The requirement of furnishing a bond shall be waived for special fuel users having valid Washington vehicle license plates on all of their licensed vehicles and having an estimated tax liability of less than five hundred dollars per year and for special fuel dealers who only deliver special fuel into the fuel tanks of marine vessels.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: *Provided*, That those special fuel dealers and special fuel users having held a special fuel license for five or more years without having said license suspended or revoked by the department shall be permitted to reduce the amount of their bond to twice the estimated monthly tax liability: *Provided further*, That the total amount of the bond or bonds shall never be less than five hundred dollars nor more than fifty thousand dollars. [1983 c 242 § 2; 1979 c 40 § 7; 1977 c 26 § 1; 1973 1st ex.s. c 156 § 4; 1971 ex.s. c 175 § 12.]

82.38.120 Issuance of license—Refusal—Posting—Display—Duration—Transferability. Upon receipt and approval of an application and bond (if required), the department shall issue to the applicant a license to act as a special fuel dealer, a special fuel supplier, or a special fuel user: *Provided*, That the department may refuse to issue a special fuel dealer's license, special fuel supplier's license, or a special fuel user's license to any person (1) who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause; or (2) who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause; or (3) who, as an individual licensee, or officer, director, owner, or managing employee of a non-individual licensee, has had a special fuel license revoked for cause; or (4) who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.37, 82.38, or 46.85 RCW; or (5) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least five days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer or a special fuel supplier may use special fuel in motor vehicles owned or operated by them without securing a license as a special fuel user but they shall be subject to all other conditions, requirements and liabilities imposed herein upon a special fuel user.

The department shall furnish to each licensed special fuel supplier a list showing the name and address of each bonded special fuel dealer as of the beginning of each fiscal year, and shall thereafter during each year supplement such list monthly.

Each special fuel dealer's license, special fuel supplier's license, and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license, special fuel supplier's license, or special fuel user's license shall be transferable. [1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

82.38.130 Revocation, cancellation, and surrender of license—Bond. The department may revoke the license of any special fuel dealer, special fuel supplier, or special fuel user for any of the grounds constituting cause for denial of a license set forth in RCW 82.38.120 or for other reasonable cause. Before revoking such license the department shall notify the licensee to show cause within twenty days of the date of the notice why the license should not be revoked: *Provided*, That at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license.

The department shall cancel any license to act as a special fuel dealer, a special fuel supplier, or a special fuel user immediately upon surrender thereof by the holder.

It shall be presumed that a special fuel dealer's bond is in effect until such time as the department notifies all licensed special fuel suppliers to the contrary by mailing to their current address of record.

Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of forty-five days from the date which such surety shall

have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the forty-five day period. The department shall promptly, upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the forty-five day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in subsection (12) of RCW 82.38.020, the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in subsection (12) of RCW 82.38.020 if, in its opinion, the security of the surety bond therefor filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate. Upon failure of the special fuel dealer or special fuel user to give such new or additional surety bond or to deposit additional securities within forty-five days after being requested to do so by the department, or after he shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the department, the department forthwith shall cancel his license. [1979 c 40 § 9; 1977 c 26 § 2; 1971 ex.s. c 175 § 14.]

82.38.140 Special fuel records. (1) Every special fuel dealer, special fuel supplier, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than three years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis. Such

operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

Every special fuel supplier, special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of his permanent records for the time and purposes above provided.

Every special fuel user shall keep, in addition to his records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used. [1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

82.38.150 Periodic tax reports. For the purpose of determining the amount of his liability for the tax herein imposed each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department, at periodic intervals as shown in the following schedule:

Estimated Yearly Tax Liability	Reporting Frequency
\$ 0 – \$100	Yearly
\$101 – 250	Semi-yearly
\$251 – 499	Quarterly
\$500 and over	Monthly

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to his address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter: *Provided*, That if a special fuel dealer or special fuel user is also a special fuel supplier at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the tax report to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the

next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, shall have the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38-.075 and RCW 82.38.080(1), (2), (3), and (8) [(9)], in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section. [1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

82.38.160 Computation and payment of tax—
Electronic funds transfer. (1) The tax imposed by this chapter shall be computed as follows: (a) With respect to special fuel upon which the tax has been collected by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel delivered subject to the special fuel tax; (b) with respect to special fuel on which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel consumed by him in the propulsion of a motor vehicle on the highways of this state.

(2) Except as provided in subsection (3) of this section, the tax return shall be accompanied by a remittance payable to the state treasurer covering the tax moneys collected by the special fuel dealer or the amount determined to be due hereunder by licensed users of special fuels during the preceding reporting period.

(3) If the tax is paid by electronic funds transfer and the reporting period ends on the last day of a calendar

month, the tax shall be paid on or before the state business day immediately preceding the last state business day of the month following the end of the reporting period. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month as provided in RCW 82.38.150, the tax shall be paid on or before the state business day immediately preceding the last state business day of the thirty-day period following the end of the reporting period.

(4) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

Effective date—1987 c 174: See note following RCW 82.36.010.

82.38.170 Civil and statutory penalties—Deficiency assessments—Interest—Cancellation of vehicle registrations—Interest—Cancellation of vehicle registrations. (1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time prescribed by RCW 82.38.150 and 82.38.160, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department shall, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or wilful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: *Provided*, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(8) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the special fuel dealer or special fuel user has so requested in his petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(9) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his address as the same appears in the records of the department.

(10) Any licensee who has had their special fuel user license, special fuel dealer license, special fuel supplier license, or combination thereof revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(11) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40

§ 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

Effective date—1987 c 174: See note following RCW 82.36.010.

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.180 Refunds and credits. Any person who has paid a special fuel tax either directly or to the vendor from whom it was purchased may file a claim for a refund of the tax so paid and shall be reimbursed and repaid the amount of:

(1) Any taxes previously paid on special fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state.

(2) Any taxes previously paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

(3) Any tax, penalty or interest erroneously or illegally collected or paid.

(4) Any taxes previously paid on all special fuel which is lost or destroyed, while applicant shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(5) Any taxes previously paid on all special fuel of five hundred gallons or more which is lost or destroyed while applicant shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

Recovery for such loss or destruction under either subsection (4) or (5) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as they may deem necessary. In the event that the department is not satisfied that the fuel was lost or destroyed as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, they may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on special fuel alleged to be lost or destroyed. [1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.190 Procedures for claiming refunds or credits.

(1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user or to any person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall

thereupon draw his warrant for such certified amount to such special fuel dealer or special fuel user or any person: *Provided, however*, That the department shall deduct fifty cents from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund to defray expenses in furnishing the claim forms and other forms provided for in this chapter.

(3) No refund or credit shall be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, subsections (1), (2), (4) and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within three years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3).

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.200 Suits for recovery of taxes illegally or erroneously collected. (1) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.38.180 unless a claim for refund or credit has been duly filed pursuant to RCW 82.38.190.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.38.190, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any special fuel tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

(5) In any judgment, interest shall be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [1971 ex.s. c 175 § 21.]

82.38.210 Tax lien—Filing required. If any special fuel dealer, supplier, or user liable for the remittance of tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof. The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien as hereinafter provided.

In order to avail itself of the lien hereby created, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties and interest claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired

by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state. [1979 c 40 § 15; 1971 ex.s. c 175 § 22.]

82.38.220 Notice of delinquency to persons controlling property of user or dealer—Transfer or disposition of property, credits, or debts prohibited—Delivery to department. In the event any special fuel user or special fuel dealer is delinquent in the payment of any obligation imposed under this chapter, the department may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such user or dealer or owing any debts to such user or dealer, at the time of the receipt by them of such notice. Any person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall immediately deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against such person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1983 c 242 § 5; 1979 c 40 § 16; 1971 ex.s. c 175 § 23.]

82.38.230 Delinquency—Seizure and sale of property. Whenever any special fuel user, supplier or dealer is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the user, supplier or dealer in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent user, supplier or dealer and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date

set for the sale by enclosing it in an envelope addressed to such user, supplier or dealer at his address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due hereunder, the name of the user, supplier or dealer and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state hereunder from the delinquent user, supplier or dealer, the excess shall be returned to such user, supplier or dealer and his receipt obtained therefor. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to such user, supplier or dealer pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of such user, supplier or dealer shall not be available, the department shall deposit such excess with the state treasurer as trustee for such user, supplier or dealer, his heirs, successors, or assigns: *Provided*, That prior to making any seizure of property as herein provided for, the department may first serve upon the user's, supplier's, or dealer's bondsman a notice of the delinquency, with a demand for the payment of the amount due. [1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

82.38.235 Warrant on assessment—Superior court filing—Lien—Writs of execution and garnishment. Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the special fuel user, supplier or dealer mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a

lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. [1979 c 40 § 22.]

82.38.240 Delinquency—Collection by civil action. Whenever any special fuel user or special fuel dealer is delinquent in the payment of any obligation hereunder the department may transmit notice of such delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from such user or dealer. In any suit brought to enforce the rights of the state hereunder, a certificate by the department showing the delinquency shall be prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of this chapter relating to such obligation. [1971 ex.s. c 175 § 25.]

82.38.250 Remedies cumulative. The foregoing remedies of the state in this chapter shall be cumulative and no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [1971 ex.s. c 175 § 26.]

82.38.260 Administration and enforcement. The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer, special fuel supplier or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason

to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received by a special fuel dealer or a special fuel user into storage and dispensing equipment designed to fuel motor vehicles is delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer, special fuel supplier or special fuel user, provided such other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public. [1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

82.38.265 Administration, collection, and enforcement of taxes pursuant to chapter 82.41 RCW. For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to an agreement under chapter 82.41 RCW, chapter 82.41 RCW shall control to the extent of any conflict. [1982 c 161 § 14.]

82.38.270 Violations and penalties. It shall be unlawful for any person to:

- (1) Refuse, or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;
- (2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter;
- (3) Conduct any activities requiring a license under this chapter without a license or after a license has been suspended, surrendered, canceled, or revoked;
- (4) Fail to keep and maintain the books and records required by this chapter;
- (5) Divert special fuel purchased for a nontaxable use to a use subject to the taxes imposed by this chapter without payment of the taxes as required by this chapter.

Except as otherwise provided by law, any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and

costs of prosecution, or imprisonment for not more than one year, or both.

The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter. [1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

82.38.275 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules or regulations issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by him to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [1979 c 40 § 20.]

82.38.280 State preempts tax field. The tax herein levied is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel: *Provided*, That nothing in this section or chapter 82.38 RCW shall be construed to prohibit in any manner the imposition of a city tax upon special fuel pursuant to *RCW 82.39.010. [1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

*Reviser's note: RCW 82.39.010 expired on June 30, 1985.

Effective date—Severability—1979 ex.s. c 181: See notes following RCW 82.36.440.

82.38.290 Disposition of funds. All taxes, interest and penalties collected under this chapter shall be credited and deposited in the same manner as are motor vehicle fuel taxes collected under RCW 82.36.410. [1971 ex.s. c 175 § 30.]

82.38.300 Judicial review and appeals. Judicial review and appeals shall be governed by the Administrative Procedure Act, chapter 34.04 RCW. [1971 ex.s. c 175 § 31.]

82.38.900 Section captions. All section captions used in this chapter do not constitute any part of the law. [1971 ex.s. c 175 § 32.]

82.38.910 Short title. This chapter may be cited as the "Special Fuel Tax Act". [1971 ex.s. c 175 § 1.]

82.38.920 Severability—1971 ex.s. c 175. If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 175 § 34.]

82.38.930 Effective date—1971 ex.s. c 175. The effective date of this Special Fuel Tax Act is January 1, 1972. [1971 ex.s. c 175 § 36.]

Chapter 82.41

MULTISTATE MOTOR FUEL TAX AGREEMENT

Sections	Purpose.
82.41.010	Purpose.
82.41.020	Definitions.
82.41.030	Motor fuel tax cooperative agreement authorized— Prohibition.
82.41.040	Determination of amount of tax collected on behalf of this state.
82.41.050	Provisions of agreement.
82.41.060	Credits—Refunds.
82.41.070	Audits.
82.41.080	Investigatory power.
82.41.090	Appeal procedures.
82.41.100	Exchange of information.
82.41.110	Construction and application.
82.41.120	Implementing rules required.

82.41.010 Purpose. It is the purpose of this chapter to simplify the confusing, unnecessarily duplicative, and burdensome motor fuel use tax licensing, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the state of Washington to participate in a multistate motor fuel tax agreement for the administration, collection, and enforcement of those states' motor fuel use taxes. [1982 c 161 § 1.]

82.41.020 Definitions. As used in this chapter unless the context clearly requires otherwise:

(1) "Department" means the department of licensing;
(2) "Motor fuel" means all combustible gases and liquids used for the generation of power for propulsion of motor vehicles;

(3) "Motor carrier" means an individual, partnership, firm, association, or private or public corporation engaged in interstate commercial operation of motor vehicles, any part of which is within this state or any other state which is party to an agreement under this chapter;

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, a foreign country, or a state or province of a foreign country;

(5) "Base state" means the state in which the motor carrier is legally domiciled, or in the case of a motor carrier who has no legal domicile, the state from or in which the motor carrier's vehicles are most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled;

(6) "Agreement" means a motor fuel tax agreement under this chapter;

(7) "Licensee" means a motor carrier who has been issued a fuel tax license under a motor fuel tax agreement. [1982 c 161 § 2.]

82.41.030 Motor fuel tax cooperative agreement authorized—Prohibition. The department may enter into a motor fuel tax cooperative agreement with another state or states which provides for the administration, collection, and enforcement of each state's motor fuel taxes on motor fuel used by motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to vehicle licensing, size, weight, load, or operation of motor vehicles upon the public highways of this state. [1982 c 161 § 3.]

82.41.040 Determination of amount of tax collected on behalf of this state. The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this chapter shall be determined as provided in chapters 82.37 and 82.38 RCW. [1982 c 161 § 4.]

82.41.050 Provisions of agreement. An agreement entered into under this chapter may provide for:

(1) Defining the classes of motor vehicles upon which taxes are to be collected under the agreement;

(2) Establishing methods for base state fuel tax licensing, license revocation, and tax collection from motor carriers on behalf of the states which are parties to the agreement;

(3) Establishing procedures for the granting of credits or refunds on the purchase of excess tax-paid fuel;

(4) Defining conditions and criteria relative to bonding requirements, including criteria for exemption from bonding;

(5) Establishing tax reporting periods not to exceed one calendar quarter, and tax report due dates not to exceed one calendar month after the close of the reporting period;

(6) Penalties and interest for filing of tax reports after the due dates prescribed by the agreement;

(7) Establishing procedures for forwarding of fuel taxes, penalties, and interest collected on behalf of another state to that state;

(8) Recordkeeping requirements for licensees; and

(9) Any additional provisions which will facilitate the administration of the agreement. [1982 c 161 § 5.]

82.41.060 Credits—Refunds. Any licensee purchasing more tax-paid motor fuel in this state than the licensee uses in this state during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax-paid fuel purchased. Upon request, this credit may be refunded to the licensee by the department in accordance with the agreement. [1982 c 161 § 6.]

82.41.070 Audits. The agreement may require the department to perform audits of licensees, or persons required to be licensed, based in this state to determine whether motor fuel taxes to be collected under the agreement have been properly reported and paid to each state party to the agreement. The agreement may authorize other states to perform audits on licensees, or persons required to be licensed, based in their states on behalf of the state of Washington and forward the audit findings to the department. Such findings may be served upon the licensee or such other person in the same manner as audits performed by the department.

The agreement shall not preclude the department from auditing the records of any person who has used motor fuels in this state. Any licensee or person required to be licensed from whom the department has requested records shall make the records available at the location designated by the department or may request the department to audit such records at that licensee's or person's place of business. If the place of business is located outside this state, the department may require the licensee or such other person to reimburse the department for authorized per diem and travel expenses. [1982 c 161 § 7.]

82.41.080 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by the director, to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [1982 c 161 § 8.]

82.41.090 Appeal procedures. The agreement shall specify procedures by which a licensee may appeal a license revocation or audit assessment by the department. Such appeal procedures shall be in accordance with chapters 34.04 and 82.38 RCW. [1982 c 161 § 9.]

82.41.100 Exchange of information. The agreement may require each state to forward to other states any information available which relates to the acquisition, sale, use, or movement of motor fuels by any licensee or person required to be licensed. The department may further disclose to other states information which relates to the persons, offices, motor vehicles and other real and

personal property of persons licensed or required to be licensed under the agreement. [1982 c 161 § 10.]

82.41.110 Construction and application. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it for the purpose of participating in a multistate motor fuel tax agreement. [1982 c 161 § 11.]

82.41.120 Implementing rules required. The department shall adopt such rules as are necessary to implement this chapter and any agreement entered into under this chapter. [1982 c 161 § 12.]

Chapter 82.42 AIRCRAFT FUEL TAX

Sections	
82.42.010	Definitions.
82.42.020	Aircraft fuel tax imposed—Exception—Rate to be computed.
82.42.025	Computation of aircraft fuel tax rate.
82.42.030	Exemptions.
82.42.040	Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements.
82.42.050	Failure of distributor to file report or statement—Determination by director of amount sold, delivered or used—Basis for tax assessment—Penalty—Records public.
82.42.060	Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36-.040, 82.36.110–82.36.140 made applicable.
82.42.070	Imports, exports, sales to United States government exempt—Procedure—Sales to state or political subdivisions not exempt—Refund procedures.
82.42.080	Violations—Penalty.
82.42.090	Tax proceeds—Disposition—Aeronautics account—Earnings.
82.42.100	Enforcement.
82.42.110	Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement.
82.42.900	Severability—1967 ex.s. c 10.

82.42.010 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of licensing;
- (2) "Director" means the director of licensing;
- (3) "Person" means every natural person, firm, partnership, association, or private or public corporation;
- (4) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel;
- (5) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft;
- (6) "Dealer" means any person engaged in the retail sale of aircraft fuel;
- (7) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and shall include any

dealer from whom the tax hereinafter imposed has not been collected;

(8) "Weighted average retail sales price of aircraft fuel" means the average retail sales price, excluding any federal excise tax, of the several grades of aircraft fuel sold by dealers throughout the state (less any state excise taxes on the sale, distribution, or use thereof) upon which fuel the tax levied by this chapter has been collected, weighted to reflect the quantities sold at each price;

(9) "Fiscal half-year" means a six-month period ending June 30th or December 31st;

(10) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load. [1983 c 49 § 1; 1982 1st ex.s. c 25 § 1; 1979 c 158 § 229; 1969 ex.s. c 254 § 1; 1967 ex.s. c 10 § 1.]

Effective date—1983 c 49: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1983." [1983 c 49 § 3.]

Severability—1982 1st ex.s. c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 25 § 11.]

Effective date—1982 1st ex.s. c 25: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 1st ex.s. c 25 § 12.]

Effective date—1969 ex.s. c 254: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 254 § 7.]

82.42.020 Aircraft fuel tax imposed—Exception—Rate to be computed. There is hereby levied, and there shall be collected by every distributor of aircraft fuel, an excise tax at the rate computed under RCW 82.42.025 on each gallon of aircraft fuel sold, delivered or used in this state: *Provided however*, That such aircraft fuel excise tax shall not apply to fuel for aircraft that both operate from a private, non-state-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals: *Provided further*, That there shall be collected from every consumer or user of aircraft fuel either the use tax imposed by RCW 82.12.020, as amended, or the retail sales tax imposed by RCW 82.08.020, as amended, collection procedure to be as prescribed by law and/or rule or regulation of the department of revenue. The taxes imposed by this chapter shall be collected and paid to the state but once in respect to any aircraft fuel. [1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.025 Computation of aircraft fuel tax rate. (1) During the fifth month of each fiscal half-year ending

June 30th and December 31st of each year, the department of licensing shall compute an aircraft fuel tax rate to the nearest one-half cent per gallon of aircraft fuel by multiplying three percent times the weighted average retail sales price of aircraft fuel, per gallon, sold within the state in the third month of the fiscal half-year. The department shall determine the weighted average retail sales price of aircraft fuel by state-wide sampling and survey techniques designed to reflect these prices for the third month of the fiscal half-year. The department shall establish reasonable guidelines for its sampling and survey methods.

(2) The excise tax rate computed under subsection (1) of this section or five cents per gallon, whichever is greater, shall apply to the sale, distribution, or use of aircraft fuel beginning the fiscal half-year following computation of the rate and shall remain in effect for each succeeding fiscal half-year until a subsequent computation requires a change in the rate. For the period May 1, 1983, through June 30, 1983, the aircraft fuel tax shall be five cents per gallon. [1983 c 49 § 2; 1982 1st ex.s. c 25 § 3.]

Effective date—1983 c 49: See note following RCW 82.42.010.

Severability—**Effective date**—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.030 Exemptions. The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state shall not apply to aircraft fuel used for the following purposes: (1) The operation of aircraft when such use is by any air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended; (2) the operation of aircraft for testing or experimental purposes; (3) the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers; and (4) the operation of aircraft in the operations of a local service commuter: *Provided*, That the director's determination as to a particular activity for which aircraft fuel is used as being an exemption under this section, or otherwise, shall be final. [1982 1st ex.s. c 25 § 4; 1967 ex.s. c 10 § 3.]

Severability—**Effective date**—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements. The director shall by rule and regulation adopted as provided in chapter 34.04 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of chapter 82.36

RCW as is provided for distributors of motor vehicle fuel under RCW 82.36.060; he shall provide such forms and may require such reports or statements as in his determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his representative who may require a statement under oath as to the contents thereof. [1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

Severability—**Effective date**—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.050 Failure of distributor to file report or statement—Determination by director of amount sold, delivered or used—Basis for tax assessment—Penalty—Records public. Should any distributor fail to file any report or statement, as shall be required by rule and regulation of the director, showing the total number of gallons of aircraft fuel sold, delivered or used by a distributor within the state during the preceding calendar month, the director shall proceed forthwith to determine from the best available sources such amount and said determination shall be presumed to be correct for that period, until proved by competent evidence to be otherwise. The director shall immediately assess the excise tax in the amount so determined, adding thereto a penalty of ten percent for failure to report. Such penalty shall be cumulative of other penalties herein provided. All statements or reports required to be filed with the director as required in this section shall be public records. [1969 ex.s. c 254 § 4; 1967 ex.s. c 10 § 5.]

82.42.060 Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.110–82.36.140 made applicable. The amount of aircraft fuel excise tax imposed under RCW 82.42.020 for each month shall be paid to the director on or before the twenty-fifth day of the month thereafter, and if not paid prior thereto, shall become delinquent at the close of business on that day, and a penalty of ten percent of such excise tax must be added thereto for delinquency. Any aircraft fuel tax, penalties, and interest payable under the provisions of this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment. The provisions of RCW 82.36.110 relating to a lien for taxes, interests or penalties due, shall be applicable to the collection of the aircraft fuel excise tax provided in RCW 82.42.020, and the provisions of RCW 82.36.120, 82.36.130 and 82.36.140 shall apply to any distributor of aircraft fuel with respect to the aircraft fuel excise tax imposed under RCW 82.42.020. [1969 ex.s. c 254 § 5; 1969 c 139 § 4; 1967 ex.s. c 10 § 6.]

82.42.070 Imports, exports, sales to United States government exempted—Procedure—Sales to state

or political subdivisions not exempt—Refund procedures. The provisions of RCW 82.42.020 requiring the payment of an aircraft fuel excise tax on aircraft fuel shall not apply to aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to aircraft fuel exported from this state, nor to aircraft fuel sold to the United States government or any agency thereof: *Provided*, That exemptions granted under this section shall be null and void unless full conformance is made with the requisite administrative procedure set forth for procuring such exemptions under rules and regulations of the director promulgated under the provisions of this chapter. Except as provided in RCW 82.42.030, nothing in this chapter shall be construed to exempt the state or any political subdivision thereof from the payment of the aircraft excise fuel tax provided in RCW 82.42.020. When setting up rules and regulations as provided for in RCW 82.42.040, the director shall provide for such refund procedure as deemed necessary to carry out the provisions of this chapter, and full compliance with such provisions shall be essential before receipt of any refund thereunder. [1982 1st ex.s. c 25 § 6; 1971 ex.s. c 156 § 4; 1967 ex.s. c 10 § 7.]

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.080 Violations—Penalty. Any person violating any provision of this chapter or any rule or regulation of the director promulgated hereunder, or making any false statement, or concealing any material fact in any report, statement, record or claim, or who commits any act with intent to avoid payment of the aircraft fuel excise tax imposed by this chapter, or who conspires with another person with intent to interfere with the orderly collection of such tax due and owing under this chapter, shall be guilty of a misdemeanor. [1982 1st ex.s. c 25 § 7; 1967 ex.s. c 10 § 8.]

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.090 Tax proceeds—Disposition—Aeronautics account—Earnings. All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund. All earnings of investments of balances in the aeronautics account shall be credited to the general fund. [1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.100 Enforcement. The director is charged with the enforcement of the provisions of this chapter and

rules and regulations promulgated hereunder. The director may, in his discretion, call on the state patrol or any peace officer in the state, who shall then aid in the enforcement of this chapter or any rules or regulations promulgated hereunder. [1967 ex.s. c 10 § 10.]

82.42.110 Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement. Every person other than a distributor who acquires any aircraft fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such aircraft fuel into this state and sells, delivers, or in any manner uses it in this state shall, if the tax has not been paid, be subject to the provisions of RCW 82.42.040 provided for distributors and shall pay a tax at the rate computed under RCW 82.42.025 for each gallon thereof so sold, delivered, or used in the manner provided for distributors. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the aircraft fuel tax in RCW 82.42.090. For failure to comply with the terms of this chapter, such person shall be subject to the same penalties imposed upon distributors. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing herein shall be construed as classifying such persons as distributors. [1982 1st ex.s. c 25 § 9; 1971 ex.s. c 156 § 5.]

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.900 Severability—1967 ex.s. c 10. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 10 § 11.]

Chapter 82.44

MOTOR VEHICLE EXCISE TAX

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82.44.030	Tax on motor vehicle dealers.
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82.44.150	Apportionment and distribution of motor vehicle excise taxes generally (as amended by 1987 c 428).

- 82.44.150 Apportionment and distribution of motor vehicle excise taxes generally (as amended by 1987 1st ex.s. c 9).
 82.44.160 Distribution to municipal research council.
 82.44.170 Computation of excise taxes when commingled with licensing fees.
 82.44.900 Severability—Construction—1961 c 15.

Constitutional limitations on certain taxes, highway funds: State Constitution Art. 2 § 40.

Highway user tax structure: Chapter 46.85 RCW.

Local motor vehicle excise tax for mass transit: RCW 35.58.273.

Nonresident members of armed forces, exemption from motor vehicle excise tax: RCW 46.16.480.

Reciprocal or proportional registration of vehicles: Chapter 46.85 RCW.

"Registration year", defined—"Last day of the month", defined: RCW 46.16.006.

82.44.010 "Motor vehicle" defined. For the purposes of this chapter, unless context otherwise requires:

"Motor vehicle" means all motor vehicles, trailers and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (1) vehicles carrying exempt licenses, (2) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets, or highways, (3) motor vehicles or their trailers used entirely upon private property, (4) mobile homes and travel trailers as defined in RCW 82.50.010, or (5) motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington provided personnel were also nonresident at the time of their entry into military service. [1979 c 107 § 10; 1971 ex.s. c 299 § 54; 1967 c 121 § 4; 1963 c 199 § 1; 1961 c 15 § 82.44.010. Prior: 1957 c 269 § 18; 1955 c 264 § 1; 1945 c 152 § 1; 1943 c 144 § 1; Rem. Supp. 1945 § 6312-115.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.44.013 Fair market value—Exclusions. For purposes of this chapter, fair market value shall exclude value attributable to modifications of a motor vehicle and equipment, other than standard or optional equipment provided by the manufacturer of the motor vehicle, that are designed to facilitate the use or operation of the motor vehicle by a handicapped person. [1983 c 200 § 6.]

Severability—1983 c 200: See note following RCW 46.04.710.

82.44.015 Ride-sharing vans and vehicles excluded—Notice—Liability for tax. (Expires June 30, 1995.) For the purposes of this chapter, in addition to the exclusions under RCW 82.44.010, "motor vehicle" shall not include: (1) Vans used regularly as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not fewer than seven persons, including passengers and driver, or not fewer than five persons including the driver, when at least three of those persons are confined

to wheelchairs when riding; or (2) vehicles with a seating capacity greater than fifteen persons which otherwise qualify as ride-sharing vehicles under RCW 46.74.010(3) used exclusively for ride sharing for the elderly or the handicapped by not fewer than seven persons, including driver. The registered owner of one of these vehicles shall notify the department of licensing upon termination of regular use of the vehicle as a ride-sharing vehicle and shall be liable for the tax imposed by this chapter, prorated on the remaining months for which the vehicle is licensed. [1982 c 142 § 1; 1980 c 166 § 3.]

Severability—Expiration date—1980 c 166: See notes following RCW 82.08.0287.

Ride-sharing vehicles—Special plates: RCW 46.16.023.

82.44.020 Basic tax imposed—Additional taxes imposed—Exceptions—Liability of residents who license vehicles out-of-state. (1) An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 as now or hereafter amended, or dealer's licenses. The annual amount of such excise tax shall be two percent of the fair market value of such vehicle.

(2) An additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise shall be two-tenths of one percent of the fair market value of such vehicle.

(3) Effective with January, 1989, motor vehicle license expirations, and ending after December, 1990, expirations, an additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise tax shall be one-tenth of one percent of the fair market value of such vehicle.

(4) The department of licensing and county auditors shall collect the additional tax imposed by subsections (2) and (3) of this section for any registration year for the months of that registration year in which such additional tax is effective, and in the same manner and at the same time as the tax imposed by subsection (1) of this section.

(5) In no case shall the total tax be less than two dollars except for proportionally registered vehicles.

(6) An additional tax is imposed equal to the taxes payable under subsections (1) and (2) of this section multiplied by the rate specified in RCW 82.02.030.

(7) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein. [1987 1st ex.s. c 9 § 5; 1987 c 260 § 1; 1983 2nd ex.s. c 3 § 19; 1982 2nd ex.s. c 14 § 2; 1982 1st ex.s. c 35 § 26; 1981 c 222 § 10; 1979 c 158 § 230; 1977 ex.s. c 332 § 1; 1963 c 199 § 2; 1961 c 15 § 82.44.020. Prior: 1959 ex.s. c 3 § 19; 1957 c

261 § 10; 1943 c 144 § 2; Rem. Supp. 1943 § 6312-116; prior: 1937 c 228 § 2, part.]

Reviser's note: This section was amended by 1987 c 260 § 1 and by 1987 1st ex.s. c 9 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—Applicability—1982 2nd ex.s. c 14: See note following RCW 82.02.030.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1977 ex.s. c 332: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 332 § 4.]

Severability—1977 ex.s. c 332: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 332 § 3.]

82.44.030 Tax on motor vehicle dealers. Every dealer in motor vehicles, for the privilege of using any motor vehicle eligible to be used under a set of dealer's license plates, shall pay an excise tax of two dollars, and such tax shall be collected upon the issuance of each original set of dealer's license plates, and also a similar tax shall be collected upon the issuance of each set of dealer's duplicate license plates, which taxes shall be in addition to any tax otherwise payable under this chapter: *Provided*, That no dealer's license plates shall be required on any camper as defined in RCW 82.50.010 when the motor vehicle carrying such camper is using dealer license plates. [1971 ex.s. c 299 § 51; 1961 c 15 § 82.44.030. Prior: 1943 c 144 § 3; Rem. Supp. 1943 § 6312-117; prior: 1937 c 228 § 2, part.]

Effective date—1971 ex.s. c 299: See RCW 82.50.901.

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

82.44.040 Schedule to be prepared—Basis of tax. The department of revenue, in consultation with the department of licensing shall prepare at least once each year a schedule for use in the collection of the excise tax imposed by this chapter. Such schedule shall be based upon such information as may be available to them pertaining to the fair market value of motor vehicles. Such vehicles shall be classified into a convenient number of classes on the basis of price, make, type, year of manufacture, or any other reasonable basis, and to the value of vehicles within the classes as thus determined shall be applied the rate of tax prescribed in RCW 82.44.020. In determining fair market value, the department of revenue may use any guidebook, report, or compendium of recognized standing in the automotive industry. The schedule shall show, so far as possible, the amount of excise tax for vehicles within each class and shall sufficiently describe the various motor vehicles included

within each classification to enable the department of licensing and its agents to ascertain readily the amount of tax applicable to any particular motor vehicle. [1979 c 158 § 231; 1975 1st ex.s. c 118 § 12; 1975 1st ex.s. c 278 § 94; 1961 c 15 § 82.44.040. Prior: 1955 c 189 § 1; 1943 c 144 § 4; Rem. Supp. 1943 § 6312-118; prior: 1937 c 228 § 3.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.44.045 Schedule to include campers—Appraisal. The department of revenue and the department of licensing shall include campers on the schedule prepared by them as required under RCW 82.44.040, and any unlisted campers shall be appraised in the same manner as motor vehicles as provided in RCW 82.44.050. [1979 c 158 § 232; 1975 1st ex.s. c 118 § 13; 1971 ex.s. c 299 § 52.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1971 ex.s. c 299: See RCW 82.50.901.

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

82.44.050 Independent appraisal of unlisted vehicles. Whenever a person applies to the county auditor for a license for a motor vehicle which does not appear upon the schedule, the applicant shall apply to the county assessor of his county for computation of the amount of excise tax due. Upon any such application the assessor shall appraise the vehicle at its fair market value from such automotive guidebooks or listings or other information as he may have available and ascertain the amount of excise tax by applying to such appraisal the rate prescribed in RCW 82.44.020, and thereupon the applicant shall be given a certificate showing the excise tax payable under this chapter. [1981 c 222 § 11; 1963 c 199 § 3; 1961 c 15 § 82.44.050. Prior: 1943 c 144 § 5; Rem. Supp. 1943 § 6312-119; prior: 1937 c 228 § 4.]

82.44.060 Payment of tax—Abatement for fractional year—Transfer of ownership. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a motor vehicle. Whenever an application is made to the department of licensing or its agents for a license for a motor vehicle there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter prorated to comply with the effective date of the annual schedule prepared pursuant to RCW 82.44.040, and no dealer's license or license plates, and no license or license plates for a motor vehicle shall be issued unless such tax is paid in full. The excise tax hereby imposed shall be collected for each registration year: *Provided*, That the excise tax upon a motor vehicle licensed for the first time in this state after the last day of any registration month shall only be levied for the remaining months of the registration year including the month in which the motor vehicle is being licensed: *Provided further*, That

the tax shall in no case be less than two dollars except for proportionally registered vehicles.

A motor vehicle shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year immediately preceding the registration year in which the application for license is made or when the vehicle has been registered in another jurisdiction subsequent to any prior registration in this state.

No additional tax shall be imposed under this chapter upon any vehicle upon the transfer of ownership thereof if the tax imposed with respect to such vehicle has already been paid for the registration year or fraction of a registration year in which transfer of ownership occurs. [1981 c 222 § 12; 1979 c 158 § 233; 1975-'76 2nd ex.s. c 54 § 2; 1975 1st ex.s. c 118 § 14; 1963 c 199 § 4; 1961 c 15 § 82.44.060. Prior: 1957 c 269 § 15; 1955 c 139 § 25; 1943 c 144 § 6; Rem. Supp. 1943 § 6312-120; prior: 1937 c 228 § 5.]

Effective date—1975-'76 2nd ex.s. c 54: "This 1976 amendatory act shall take effect on January 1, 1977." [1975-'76 2nd ex.s. c 54 § 3.]

Effective date—**Severability**—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.44.080 Tax additional. The taxes imposed by this chapter are in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.44.080. Prior: 1943 c 144 § 7; Rem. Supp. 1943 § 6312-121; prior: 1937 c 228 § 6.]

82.44.090 Penalty for issuing plates without collecting tax. It shall be unlawful for the county auditor or any other person to issue a dealer's license or dealer's license plates or a license or identification plates with respect to any motor vehicle without collecting, with the required license fee, the amount of the excise tax due thereon under the provisions of this chapter. Any violation of this section shall constitute a gross misdemeanor. [1961 c 15 § 82.44.090. Prior: 1943 c 144 § 8; Rem. Supp. 1943 § 6312-122; prior: 1937 c 228 § 7.]

82.44.100 Tax receipt. The county auditor shall give to each person paying the excise tax a receipt therefor which shall sufficiently designate and identify the vehicle with respect to which the tax is paid. Such receipt may be incorporated in the receipt given for the motor vehicle license fee or dealer's license fee paid. [1961 c 15 § 82.44.100. Prior: 1943 c 144 § 9; Rem. Supp. 1943 § 6312-123; prior: 1937 c 228 § 8.]

82.44.110 Disposition of revenue. The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer, ninety-eight percent of which excise tax revenue shall upon receipt thereof be credited by the state treasurer to the general fund, and two percent of which excise tax revenue shall be credited by the state

treasurer to the motor vehicle fund to defray administrative and other expenses incurred by the state department of licensing in the collection of the excise tax: *Provided, That:*

(1) One hundred percent of the proceeds of the additional tax imposed by RCW 82.44.020(2) shall be credited by the state treasurer to the Puget Sound capital construction account in the motor vehicle fund;

(2) One hundred percent of the proceeds of the additional tax imposed by RCW 82.44.020(3) shall be credited by the state treasurer to the Puget Sound ferry operations account in the motor vehicle fund; and

(3) All revenues collected under RCW 82.44.020(6) shall be credited by the state treasurer to the general fund. [1987 1st ex.s. c 9 § 7; 1982 1st ex.s. c 35 § 12; 1979 c 158 § 235; 1977 ex.s. c 332 § 2; 1974 ex.s. c 54 § 3; 1967 c 121 § 1; 1961 c 15 § 82.44.110. Prior: 1957 c 128 § 1; 1955 c 259 § 6; 1943 c 144 § 10; Rem. Supp. 1943 § 6312-124; prior: 1937 c 228 § 9.]

Severability—**Effective date**—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—**Severability**—1977 ex.s. c 332: See notes following RCW 82.44.020.

Effective dates—1974 ex.s. c 54: "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of this 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 54 § 13.]

Severability—1974 ex.s. c 54: "If any provision of this 1974 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 54 § 14.]

82.44.120 Refunds—Claims—False statement, penalty. Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then he shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected and the state treasurer shall determine the amount of such refund by reference to the applicable excise tax schedule prepared by the department of revenue in cooperation with the department of licensing.

In case no claim is to be made for the refund of the license fee or any part thereof but claim is made by any person that he has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter which amounts to an overpayment of five dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to charge and collect the full amount of the excise tax due, which underpayment is in the amount of five dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds and the other refunds herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

Any person making any false statement under which he obtains any amount of refund to which he is not entitled under the provisions of this section, is guilty of a gross misdemeanor. [1983 c 26 § 3; 1979 c 120 § 2; 1975 1st ex.s. c 278 § 95; 1974 ex.s. c 54 § 4; 1967 c 121 § 2; 1963 c 199 § 5; 1961 c 15 § 82.44.120. Prior: 1949 c 196 § 18; 1945 c 152 § 3; 1943 c 144 § 11; Rem. Supp. 1949 § 6312-125.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.130 Ad valorem taxation barred. No motor vehicle shall be listed and assessed for ad valorem taxation so long as this chapter remains in effect. [1961 c 15 § 82.44.130. Prior: 1945 c 152 § 4, part; 1943 c 144 § 12, part; Rem. Supp. 1945 § 6312-126, part; prior: 1937 c 228 § 11.]

82.44.140 Director of licensing may act. Any duties required by this chapter to be performed by the county auditor may be performed by any other person designated by the director of licensing and authorized by him to receive motor vehicle license fees and issue receipt therefor. [1979 c 158 § 237; 1967 c 121 § 3; 1961 c 15 § 82.44.140. Prior: 1943 c 144 § 13; Rem. Supp. 1943 § 6312-127.]

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally (as amended by 1987 c 428). (1) The director of licensing shall on the twenty-fifth day of February, May, August, and November of each year, commencing with November, 1971, advise the state treasurer of the total amount of motor vehicle excise taxes remitted to the department of licensing during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.020(5)((:)) and 82.44.030, ((and 82.44.076;)) from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(5)((:)) and 82.44.030, ((and 82.44.076;)) from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof

is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department of licensing shall make the following apportionment and distribution of motor vehicle excise taxes deposited in the general fund except taxes collected under RCW 82.44.020(5). A sum equal to seventeen percent thereof shall be paid to cities and towns in the proportions and for the purposes hereinafter set forth; a sum equal to two percent of all motor vehicle excise tax receipts, except taxes collected under RCW 82.44.020(5), shall be allocable to the county sales and use tax equalization account under RCW 82.14.200; a sum equal to four and two-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax at a rate not exceeding ninety-six one-hundredths of one percent on the fair market value of every motor vehicle owned by a resident of such municipality shall be deposited in the rail development account established in RCW 47.78.010; and a sum equal to seventy percent of all motor vehicle excise tax receipts shall be allocable to the state school equalization fund and credited and transferred each year in the following order of priority:

(a) The amount required and certified by the state finance committee each year as being necessary for payment of principal of and interest on bonds authorized by *RCW 28A.47.760 through 28A.47.774 in the ensuing twelve months and any additional amounts required by the covenants of such bonds shall be transferred from the state school equalization fund to the 1963 public school building bond retirement fund.

(b) Any remaining amounts in the state school equalization fund from the motor vehicle excise taxes not required for debt service on the above bond issues shall be transferred and credited to the general fund.

(3) The amount payable to cities and towns shall be apportioned among the several cities and towns within the state according to the following formula:

(a) Sixty-five percent of the sum specified in subsection (2) of this section to be paid to cities and towns shall be apportioned ratably on the basis of population as last determined by the office of financial management.

(b) Thirty-five percent of the sum specified in subsection (2) of this section to be paid to cities and towns shall be apportioned to cities and towns under RCW 82.14.210.

(4) When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be utilized by such city or town for the purposes of police and fire protection and the preservation of the public health therein, and not otherwise. In case it be adjudged that revenue derived from the excise tax imposed by this chapter cannot lawfully be apportioned or distributed to cities or towns, all moneys directed by this section to be apportioned and distributed to cities and towns shall be credited and transferred to the state general fund.

(5) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department of licensing, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter.

(6) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle

excise taxes under subsection (5) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (5) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (5) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(7) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section shall be remitted without legislative appropriation.

(8) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (5) of this section. [1987 c 428 § 3. Prior: 1982 1st ex.s. c 49 § 20; 1982 1st ex.s. c 35 § 13; 1979 ex.s. c 175 § 4; 1979 c 158 § 238; 1974 ex.s. c 54 § 5; 1972 ex.s. c 87 § 1; prior: 1971 ex.s. c 199 § 2; 1971 ex.s. c 80 § 1; 1969 ex.s. c 255 § 15; 1961 c 15 § 82.44.150; prior: 1957 c 175 § 12; 1945 c 152 § 5; 1943 c 144 § 14; Rem. Supp. 1945 § 6312-128.]

*Reviser's note: RCW 28A.47.760 through 28A.47.774 were repealed by 1985 c 136 § 3.

Effective date—1987 c 428: See note following RCW 47.78.010.

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally (as amended by 1987 1st ex.s. c 9). (1) The director of licensing shall on the twenty-fifth day of February, May, August and November of each year, commencing with November, 1971, advise the state treasurer of the total amount of motor vehicle excise taxes remitted to the department of licensing during the preceding calendar quarter ending on the last day of March, June, September and December, respectively, except for those payable under RCW 82.44.020(~~((5))~~)(6) and 82.44.030(~~(-and 82.44.070)~~), from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(~~((5))~~)(6) and 82.44.030(~~(-and 82.44.070)~~), from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department of licensing shall make the following apportionment and distribution of motor vehicle excise taxes deposited in the general fund except taxes collected under RCW 82.44.020(~~((5))~~)(6). A sum equal to seventeen percent thereof shall be paid to cities and towns in the proportions and for the purposes hereinafter set forth; and a sum equal to two percent (~~(of all motor vehicle excise tax receipts)~~) thereof shall be allocable to the county sales and use tax equalization account under RCW 82.14.200(~~(-and a sum equal to seventy percent of all motor vehicle excise tax receipts, except taxes collected under RCW~~

~~82.44.020(5), shall be allocable to the state school equalization fund and credited and transferred each year in the following order of priority.~~

~~(a) The amount required and certified by the state finance committee each year as being necessary for payment of principal of and interest on bonds authorized by RCW 28A.47.760 through 28A.47.774 in the ensuing twelve months and any additional amounts required by the covenants of such bonds shall be transferred from the state school equalization fund to the 1963 public school building bond retirement fund.~~

~~(b) Any remaining amounts in the state school equalization fund from the motor vehicle excise taxes not required for debt service on the above bond issues shall be transferred and credited to the general fund).~~

(3) The amount payable to cities and towns shall be apportioned among the several cities and towns within the state according to the following formula:

(a) Sixty-five percent of the sum specified in subsection (2) of this section to be paid to cities and towns shall be apportioned ratably on the basis of population as last determined by the office of financial management.

(b) Thirty-five percent of the sum specified in subsection (2) of this section to be paid to cities and towns shall be apportioned to cities and towns under RCW 82.14.210.

(4) When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be utilized by such city or town for the purposes of police and fire protection and the preservation of the public health therein, and not otherwise. In case it be adjudged that revenue derived from the excise tax imposed by this chapter cannot lawfully be apportioned or distributed to cities or towns, all moneys directed by this section to be apportioned and distributed to cities and towns shall be credited and transferred to the state general fund.

(5) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department of licensing, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter.

(6) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (5) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (5) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (5) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(7) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section shall be remitted without legislative appropriation.

(8) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (5) of this section. [1987 1st ex.s. c 9 § 8. Prior: 1982 1st ex.s. c 49 § 20; 1982 1st ex.s. c 35 § 13; 1979 ex.s. c 175 § 4; 1979 c 158 § 238; 1974 ex.s. c 54 § 5; 1972 ex.s. c 87 § 1; prior: 1971 ex.s. c 199 § 2; 1971 ex.s. c 80 § 1; 1969 ex.s. c 255 § 15; 1961 c 15 § 82.44.150; prior: 1957 c 175 § 12; 1945 c 152 § 5; 1943 c 144 § 14; Rem. Supp. 1945 § 6312-128.]

Reviser's note: RCW 82.44.150 was amended twice during the 1987 legislative session, each without reference to the other.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 175: "Section 4 of this act shall take effect on January 1, 1980." [1979 ex.s. c 175 § 6.]

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.160 Distribution to municipal research council.

Before distributing moneys to the cities and towns from the general fund, as provided in RCW 82.44.150, the state treasurer shall, on the first day of July of each year, make an annual deduction therefrom of a sum equal to one-half of the biennial appropriation made pursuant to this section, which amount shall be at least seven cents per capita of the population of all cities or towns as legally certified on that date, determined as provided in said section, which sum shall be apportioned and transmitted to the municipal research council, herein created. The municipal research council may contract with and allocate moneys to any state agency, educational institution, or private consulting firm, which in its judgment is qualified to carry on a municipal research and service program. Moneys may be utilized to match federal funds available for technical research and service programs to cities and towns. Moneys allocated shall be used for studies and research in municipal government, publications, educational, conferences, and attendance thereat, and in furnishing technical, consultative, and field services to cities and towns in problems relating to planning, public health, municipal sanitation, fire protection, law enforcement, postwar improvements, and public works, and in all matters relating to city and town government. The programs shall be carried on and all expenditures shall be made in cooperation with the cities and towns of the state acting through the Association of Washington Cities by its board of directors which is hereby recognized as their official agency or instrumentality.

Funds appropriated to the municipal research council shall be kept in the treasury in the general fund, and shall be disbursed by warrant or check to contracting parties on invoices or vouchers certified by the chairman of the municipal research council or his designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Any moneys remaining unexpended or uncontracted for by the municipal research council at the end of any fiscal biennium shall be returned to the general fund and be paid to cities and towns under the provisions of RCW 82.44.150. [1974 ex.s. c 54 § 7; 1969 c 108 § 1; 1961 c 115 § 1; 1961 c 15 § 82.44.160. Prior: 1945 c 54 § 1; Rem. Supp. 1945 § 6312-128a.]

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

Severability—1969 c 108: "If any amendment or provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the amendment or provision to other persons or circumstances is not affected." [1969 c 108 § 3.]

Effective date—1969 c 108: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 c 108 § 4.]

Municipal research council: Chapter 43.110 RCW.

82.44.170 Computation of excise taxes when commingled with licensing fees. For each IRP jurisdiction that cannot report to the director the sums of dollars that are collected for the motor vehicle excise tax pursuant to chapter 82.44 RCW separately from other vehicle licensing fees pursuant to RCW 46.16.070 and 46.16.085, the director shall distribute thirty-six percent of the total fees collected as reported on the IRP vehicle registration recap information forwarded to the director by such jurisdiction pursuant to RCW 82.44.110, until such time as such jurisdiction begins reporting excise tax amounts separately from other vehicle licensing fees. The remainder of the fees collected shall be distributed in accordance with RCW 46.68.035. [1987 c 244 § 56; 1985 c 380 § 22.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

82.44.900 Severability—Construction—1961 c 15. If any provision of this chapter relating either to the apportionment or allocation of the revenue derived from the excise tax thereby imposed, or to any appropriation made by this chapter, be adjudged unconstitutional, such adjudication shall not be held to render unconstitutional or ineffectual the remaining portions of said chapter or any part thereof: *Provided, however,* That except as otherwise hereinabove provided by this section, if any section or part of a section of this chapter be adjudged unconstitutional, this entire chapter shall thereupon be and become inoperative and of no force or effect whatsoever. [1961 c 15 § 82.44.900. Prior: 1943 c 144 § 17; Rem. Supp. 1943 § 6312-131.]

Chapter 82.45

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.010	"Sale" defined.
82.45.020	"Seller" defined.
82.45.030	"Selling price" defined.
82.45.032	"Real estate," "real property," "used mobile home," "mobile home," "used floating home," and "floating home" defined.

- 82.45.035 Determining selling price of leases with option to purchase—Mining property—Payment, security when selling price not separately stated.
- 82.45.060 Tax imposed on sale of property—Additional tax imposed.
- 82.45.070 Tax is lien on property—Enforcement.
- 82.45.080 Tax is seller's obligation—Choice of remedies.
- 82.45.090 Payment of tax—Evidence of payment—Recording.
- 82.45.100 Tax payable at time of sale—Interest, penalty, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds.
- 82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property.
- 82.45.120 Standards for reporting, application and collection of tax—Real estate excise tax affidavit form, contents, use.
- 82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Departmental audit.
- 82.45.180 Disposition of proceeds—Support of common schools.

Savings—Audits, assessments, and refunds—Disposition of certain funds—1982 c 176; 1980 c 154: "Chapter 154, Laws of 1980 shall not be construed as invalidating, abating, or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed, nor any process, proceeding, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, nor the validity of any certificate of delinquency, tax deed or other instrument of sale or other proceeding thereunder, nor any criminal or civil proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder: *Provided*, That the department of revenue may conduct audits, make assessments, and grant refunds under RCW 82.45.100 and 82.45.150 with respect to any sale. Funds received by the county treasurer as payment of a tax liability incurred under a statute repealed by chapter 154, Laws of 1980 shall be paid and accounted for as provided in RCW 82.45.180." [1982 c 176 § 3; 1980 c 154 § 15.]

Purpose—1980 c 154: "It is the intent of this 1980 act to simplify the bookkeeping procedures for the state treasurer's office and for the school districts but not to impact the amount of revenues covered by this 1980 act to the various counties and other taxing districts." [1980 c 154 § 16.]

Effective dates—1980 c 154: "Sections 17, 18, and 19 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect on September 1, 1981." [1980 c 154 § 20.] Sections 17, 18, and 19, respectively, of 1980 c 154 are amendments of RCW 28A.47.073 and 28A.47.801 and an appropriation section, which being of a temporary nature, is not codified; for RCW disposition of remaining sections see below.

Severability—1980 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 154 § 21.]

1980 c 154 consists of (1) the 1982 amendments to RCW 28A.45-.020 (recodified as 82.45.020), 28A.45.060 (recodified as 82.45.060), 28A.45.080 (recodified as 82.45.080), 28A.45.090 (recodified as 82-.45.090), 28A.41.130, 28A.47.073, 28A.47.801, 36.33.110, 54.28.050, 54.28.090, and 76.12.120; (2) the enactment of RCW 28A.41.143, 82-.45.150, 82.45.180, the sections footnoted above, and an appropriation section; and (3) the repeal of RCW 28A.45.050 and 28A.45.100.

82.45.010 "Sale" defined. As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or

interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his direction, which title is retained by the vendor as security for the payment of the purchase price.

The term shall not include a transfer by gift, devise, or inheritance, a transfer of any leasehold interest other than of the type mentioned above, a cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage or the assumption by a grantee of the balance owing on an obligation which is secured by a mortgage or deed in lieu of forfeiture of the vendee's interest in a contract of sale where no consideration passes otherwise or the partition of property by tenants in common by agreement or as the result of a court decree, any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement incident thereto, the assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved, transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation, a mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof, any transfer or conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage, a conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration, nor a transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed, nor the sale of any grave or lot in an established cemetery, nor a sale by or to the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

The term sale shall further not include a transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: *Provided*, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise

provided by law. [1981 c 93 § 1; 1970 ex.s. c 65 § 1; 1969 ex.s. c 223 § 28A.45.010. Prior: 1955 c 132 § 1; 1953 c 94 § 1; 1951 2nd ex.s. c 19 § 1; 1951 1st ex.s. c 11 § 7. Formerly RCW 28A.45.010, 28.45.010.]

Recodification directed—1981 c 148; 1981 c 93: "Chapter 28A.45 RCW, as amended, repealed, and added to by chapter 134, Laws of 1980 and chapter 154, Laws of 1980 and as amended, repealed, and added to by any other enactment during a regular or extraordinary session of this forty-seventh legislature, is hereby added to and shall be recodified as chapter 82.45 RCW.

References to chapter 28A.45 RCW and its sections shall be considered references to chapter 82.45 RCW and its sections, and the code reviser shall change references to chapter 28A.45 RCW and its sections to refer to chapter 82.45 RCW and its sections." [1981 c 148 § 13; 1981 c 93 § 2; 1980 c 154 § 14.] RCW 82.45.010, appeared in 1981 c 93 § 1 as an amendment to RCW 28A.45.010 which is recodified in accordance with this session law section.

Effective date—1981 c 93 § 2: "Section 2 of this act shall take effect September 1, 1981." [1981 c 93 § 3.] This applies to the recodification directive [1981 c 93 § 2] footnoted above.

Effective date—**Severability**—1970 ex.s. c 65: See notes following RCW 82.03.050.

82.45.020 "Seller" defined. As used in this chapter the term "seller," unless otherwise indicated by the context, shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington. [1980 c 154 § 1; 1969 ex.s. c 223 § 28A.45.020. Prior: 1951 1st ex.s. c 11 § 6. Formerly RCW 28A.45.020, 28.45.020.]

Purpose—**Effective dates**—**Savings**—**Disposition of certain funds**—**Severability**—1980 c 154: See notes following chapter digest.

82.45.030 "Selling price" defined. As used in this chapter, the term "selling price" means the consideration, including money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property or estate or interest in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

The term shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for the taxes, special benefits, or improvements. [1969 ex.s. c 223 § 28A.45.030. Prior: 1951 2nd ex.s. c 19 § 2; 1951 1st ex.s. c 11 § 8. Formerly RCW 28A.45.030, 28.45.030.]

82.45.032 "Real estate," "real property," "used mobile home," "mobile home," "used floating home," and "floating home" defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Real estate" or "real property" means real property but includes used mobile homes and used floating homes.

(2) "Used mobile home" means a mobile home which has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or which has been previously used and has been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(3) "Mobile home" means a mobile home as defined by RCW 46.04.302, as now or hereafter amended.

(4) "Used floating home" means a floating home in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

(5) "Floating home" means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located. [1986 c 211 § 1; 1984 c 192 § 1; 1979 ex.s. c 266 § 1. Formerly RCW 28A.45.032.]

82.45.035 Determining selling price of leases with option to purchase—**Mining property**—**Payment, security when selling price not separately stated.** The state department of revenue shall provide by rule for the determination of the selling price in the case of leases with option to purchase, and shall further provide that the tax shall not be payable, where inequity will otherwise result, until and unless the option is exercised and accepted. A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract, but the rule shall further provide that the tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the county treasurer (1) at the time of termination, or (2) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer, or (3) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occurs first.

The term "mining property" means property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessor to conduct exploration or mining work thereon and for no other use. The term "metallic minerals" does not include clays, coal, sand and gravel, peat, gypsite, or stone, including limestone.

The state department of revenue shall further provide by rule for cases where the selling price is not separately stated or is not ascertainable at the time of sale, for the

payment of the tax at a time when the selling price is ascertained, in which case suitable security may be required for payment of the tax, and may further provide for the determination of the selling price by an appraisal by the county assessor, based on the full and true market value, which appraisal shall be prima facie evidence of the selling price of the real property. [1969 ex.s. c 223 § 28A.45.035. Prior: 1967 ex.s. c 149 § 1; 1959 c 208 § 1; 1951 2nd ex.s. c 19 § 3. Formerly RCW 28A.45.035, 28.45.035.]

82.45.060 Tax imposed on sale of property—Additional tax imposed. (1) There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to seven and seven-tenths percent of the proceeds of this tax to the state treasurer shall be deposited in the public works assistance account created in RCW 43.155.050.

(2) There is imposed an additional excise tax through June 30, 1989, upon each sale of real property at the rate of six one-hundredths of one percent of the selling price. The tax imposed under this subsection shall be deposited in the conservation area account under RCW 79.71.110. [1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

Severability—1987 c 472: See RCW 79.71.900.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.070 Tax is lien on property—Enforcement. The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1969 ex.s. c 223 § 28A.45.070. Prior: 1951 1st ex.s. c 11 § 9. Formerly RCW 28A.45.070, 28.45.070.]

82.45.080 Tax is seller's obligation—Choice of remedies. The tax levied under this chapter shall be the obligation of the seller and the department of revenue may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages and resort to one course of enforcement shall not be an election not to pursue the other. [1980 c 154 § 3; 1969 ex.s. c 223 § 28A.45.080. Prior: 1951 1st ex.s. c 11 § 10. Formerly RCW 28A.45.080, 28.45.080.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.090 Payment of tax—Evidence of payment—Recording. The tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold, said treasurer acting as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. [1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.100 Tax payable at time of sale—Interest, penalty, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds. (1) The tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within thirty days thereafter shall bear interest at the rate of one percent per month from the time of sale until the date of payment.

(2) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest as provided in subsection (1) of this section. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable under this chapter, a penalty of fifty percent of the additional tax found to be due shall be added.

(3) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or a failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer. [1982 c 176 § 1; 1981 c 167 § 2.]

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property. Where single family residential property is being transferred as the entire or part consideration for

the purchase of other single family residential property and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the amount of the tax due upon a subsequent transfer of the property by the broker or party if said transfer is made within nine months of the transfer to the broker or party: *Provided*, That if the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party the difference shall be paid, but if the tax initially paid is greater than the amount of the tax which would be due on the subsequent transfer no refund shall be allowed. [1969 ex.s. c 223 § 28A.45.105. Prior: 1967 ex.s. c 149 § 61. Formerly RCW 28A.45-.105, 28.45.105.]

82.45.120 Standards for reporting, application and collection of tax—Real estate excise tax affidavit form, contents, use. The department of revenue is authorized and shall prescribe minimum standards for uniformity in reporting, application, and collection of the real estate excise tax imposed by this chapter.

The department of revenue shall also prescribe a real estate excise tax affidavit form which shall require the following:

- (1) Identification of the seller and purchaser;
- (2) Description of the property involved including the tax parcel or account number(s);
- (3) Date of sale, type of instrument of sale, nature of transfer;
- (4) Gross sales price;
- (5) Whether or not the land is classified or designated as forest land under chapter 84.33 RCW; or classified as open space land, farm and agricultural land, or timberland under chapter 84.34 RCW; or at the time of sale exempt from property tax under chapter 84.36 RCW;
- (6) Whether or not the property is land only, land with new building (new construction), or land with a previously used building; and
- (7) The following questions, the responses to which are not required:
 - (a) Is this property at the time of sale subject to an elderly, disability, or physical improvement exemption?
 - (b) Does any building have a heat pump or solar heating or cooling system?
 - (c) Does this transaction divide a current parcel of land?
 - (d) Does this transaction include current crops or merchantable timber?
 - (e) Does this transaction involve a trade, a partial interest, corporate affiliates, related parties, a trust, a receivership, or an estate?
 - (f) Is the grantee acting as a nominee for a third party?
 - (g) Is the principal use of the land agricultural, apartments (four or more units), commercial, condominium, industrial, mobile home site, recreational, residential, or growing timber?

The affidavit form shall contain a statement of the potential compensating and additional tax liability under chapters 84.33 and 84.34 RCW, a statement of the collection of taxes under RCW 84.36.262 and 84.36.810, and a statement of the applicable penalties for perjury under chapter 9A.72 RCW.

Each county shall use the affidavit form prescribed and furnished by the department of revenue.

The affidavit shall be signed by either the seller or the buyer, or the agent of either, under oath attesting to all required information. [1981 c 167 § 5; 1980 c 134 § 1; 1969 ex.s. c 223 § 28A.45.120. Prior: 1967 ex.s. c 149 § 3. Formerly RCW 28A.45.120, 28.45.120.]

Effective date—1981 c 167: See note following RCW 82.45.150.

82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Departmental audit. All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.040, 82.32.050, 82.32.140, and 82.32-.270 and except for the penalties and the limitations thereon imposed by RCW 82.32.090, applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall also include a manual which defines transactions which are taxable under this chapter. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter. [1981 c 167 § 1; 1980 c 154 § 5.]

Effective date—1981 c 167: "This act shall take effect September 1, 1981." [1981 c 167 § 4.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Audits, assessments, and refunds: See note following chapter digest.

82.45.180 Disposition of proceeds—Support of common schools. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department of revenue for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. The proceeds of the tax on any sale occurring prior to September 1, 1981, when the proceeds have not been certified by an educational service district superintendent for school districts prior to September 1, 1981, shall be included in the amount remitted to the state treasurer. The state treasurer shall deposit the proceeds in the general fund for the support of the common schools. [1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Chapter 82.46
COUNTIES AND CITIES—EXCISE TAX ON
REAL ESTATE SALES

Sections	
82.46.010	Tax on sale of real property authorized—Additional tax authorized—Maximum rates.
82.46.021	Imposition or alteration of additional tax—Referendum petition to repeal—Procedure—Exclusive method.
82.46.030	Disposition and distribution of proceeds.
82.46.040	Tax is lien on property—Enforcement.
82.46.050	Tax is seller's obligation—Choice of remedies.
82.46.060	Payment of tax—Evidence of payment—Recording.

82.46.010 Tax on sale of real property authorized—Additional tax authorized—Maximum rates.

(1) Subject to the enactment into law of the 1982 amendment to RCW 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., the governing body of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price.

(2) Subject to the enactment into law of the 1982 amendment to RCW 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in lieu of imposing the tax authorized in RCW 82.14.030(2), the governing body of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(3) Taxes imposed under this section shall be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(4) Taxes imposed under this section shall comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(5) As used in this section, "city" means any city or town. [1982 1st ex.s. c 49 § 11.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.021 Imposition or alteration of additional tax—Referendum petition to repeal—Procedure—Exclusive method. Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.46.010(2) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the

measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29.13.010 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided for in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or increasing the rate under RCW 82.46.010(2) to a referendum vote.

Any county or city tax authorized under RCW 82.46.010(2) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [1983 c 99 § 3.]

Severability—1983 c 99: See note following RCW 82.14.200.

82.46.030 Disposition and distribution of proceeds.

(1) The county treasurer shall place one percent of the proceeds of the taxes imposed under RCW 82.46.010 in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010(1) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010(1) shall be distributed to the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund. These capital improvements funds shall be used by the respective jurisdictions for local improvements, including those listed in RCW 35.43.040.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law. [1982 1st ex.s. c 49 § 13.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.040 Tax is lien on property—Enforcement. Any tax imposed under RCW 82.46.010 and any interest or penalties thereon is a specific lien upon each piece of real property sold from the time of sale until the tax

is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1982 1st ex.s. c 49 § 14.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.050 Tax is seller's obligation—Choice of remedies. The taxes levied under RCW 82.46.010 are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other. [1982 1st ex.s. c 49 § 15.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.060 Payment of tax—Evidence of payment—Recording. Any taxes imposed under RCW 82.46.010 shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. The treasurer shall act as agent for any city within the county imposing the tax. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under RCW 82.46.010 shall be evidence of the satisfaction of the lien imposed in RCW 82.46.040 and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of this fact is made on the instrument by the treasurer. [1982 1st ex.s. c 49 § 16.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Chapter 82.48

AIRCRAFT EXCISE TAX

Sections	
82.48.010	Definitions.
82.48.020	Excise tax imposed on aircraft—Penalty for violation of chapter.
82.48.030	Amount of tax.
82.48.060	Is in addition to other taxes.
82.48.070	Tax receipt.
82.48.080	Payment and distribution of taxes.
82.48.090	Refund of excessive tax payment.
82.48.100	Exempt aircraft.
82.48.110	Aircraft not to be subject to ad valorem tax—Exceptions.

82.48.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;

(2) "Secretary" means the secretary of transportation;
 (3) "Person" includes a firm, partnership or corporation;

(4) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds; and

(5) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more. [1987 c 220 § 5; 1983 2nd ex.s. c 3 § 21; 1979 c 158 § 239; 1967 ex.s. c 9 § 1; 1961 c 15 § 82.48.010. Prior: 1949 c 49 § 1; Rem. Supp. 1949 § 11219-33.]

Severability—1987 c 220: See note following RCW 47.68.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.48.020 Excise tax imposed on aircraft—Penalty for violation of chapter. An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel shall constitute the necessary evidence of aircraft use or intended use. The tax shall be collected annually or under a staggered collection schedule as required by the secretary by rule. No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW. [1987 c 220 § 6; 1983 c 7 § 27; 1979 c 158 § 240; 1967 ex.s. c 149 § 27; 1967 ex.s. c 9 § 2; 1961 c 15 § 82.48.020. Prior: 1949 c 49 § 2; Rem. Supp. 1949 § 11219-34.]

Severability—1987 c 220: See note following RCW 47.68.230.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

82.48.030 Amount of tax. (1) The amount of the tax imposed by this chapter for each calendar year shall be as follows:

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

(2) The amount of tax imposed under subsection (1) of this section for each calendar year shall be divided into twelve parts corresponding to the months of the calendar year and the excise tax upon an aircraft registered for the first time in this state after the last day of any month shall only be levied for the remaining months

of the calendar year including the month in which the aircraft is being registered: *Provided*, That the minimum amount payable shall be three dollars.

An aircraft shall be deemed registered for the first time in this state when such aircraft was not previously registered by this state for the year immediately preceding the year in which application for registration is made. [1983 2nd ex.s. c 3 § 22; 1967 ex.s. c 9 § 3; 1963 c 199 § 6; 1961 c 15 § 82.48.030. Prior: 1949 c 49 § 3; Rem. Supp. 1949 § 11219-35.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.48.060 Is in addition to other taxes. Except as provided in RCW 82.48.110, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.48.060. Prior: 1949 c 49 § 6; Rem. Supp. 1949 § 11219-38.]

82.48.070 Tax receipt. The secretary shall give a receipt to each person paying the excise tax. [1987 c 220 § 7; 1967 ex.s. c 9 § 4; 1961 c 15 § 82.48.070. Prior: 1949 c 49 § 7; Rem. Supp. 1949 § 11219-39.]

Severability—1987 c 220: See note following RCW 47.68.230.

82.48.080 Payment and distribution of taxes. The secretary shall regularly pay to the state treasurer the excise taxes collected under this chapter, which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the general fund for administrative expenses. [1987 c 220 § 8; 1974 ex.s. c 54 § 8; 1967 ex.s. c 9 § 5; 1961 c 15 § 82.48.080. Prior: 1949 c 49 § 8; Rem. Supp. 1949 § 11219-40.]

Severability—1987 c 220: See note following RCW 47.68.230.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.48.090 Refund of excessive tax payment. In case a claim is made by any person that he has paid an erroneously excessive amount of excise tax under this chapter, he may apply to the department of transportation for a refund of the claimed excessive amount. The department shall review such application, and if it determines that an excess amount of tax has actually been paid by the taxpayer, such excess amount shall be refunded to the taxpayer by means of a voucher approved by the department of transportation and by the issuance of a state warrant drawn upon and payable from such funds as the legislature may provide for that purpose. No refund shall be allowed, however, unless application for the refund is filed with the department of transportation within ninety days after the claimed excessive excise tax was paid and the amount of the overpayment exceeds five dollars. [1987 c 220 § 9; 1985 c 414 § 5; 1975 1st ex.s. c 278 § 96; 1961 c 15 § 82.48.090. Prior: 1949 c 49 § 9; Rem. Supp. 1949 § 11219-41.]

Severability—1987 c 220: See note following RCW 47.68.230.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.48.100 Exempt aircraft. This chapter shall not apply to:

Aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which are not engaged in carrying persons or property for commercial purposes;

Aircraft registered under the laws of a foreign country;

Aircraft which are owned by a nonresident and registered in another state: *Provided*, That if any such aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

Aircraft engaged principally in commercial flying which constitutes interstate or foreign commerce; and aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

Aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW. [1965 ex.s. c 173 § 28; 1961 c 15 § 82.48.100. Prior: 1955 c 150 § 12; 1949 c 49 § 10; Rem. Supp. 1949 § 11219-42.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.48.110 Aircraft not to be subject to ad valorem tax—Exceptions. The first tax to be collected under this chapter shall be for the calendar year 1968. No aircraft with respect to which the excise tax imposed by this chapter is payable shall be listed and assessed for ad valorem taxation so long as this chapter remains in effect, and any such assessment heretofore made except under authority of section 13, chapter 49, Laws of 1949 and section 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled: *Provided*, That any aircraft, whether or not subject to the provisions of this chapter, with respect to which the excise tax imposed by this chapter will not be paid or has not been paid for any year shall be listed and assessed for ad valorem taxation in that year, and the ad valorem tax liability resulting from such listing and assessment shall be collected in the same manner as though this chapter had not been passed: *Provided further*, That this chapter shall not be construed to affect any ad valorem tax based upon assessed valuations made in 1948 and/or any preceding year for taxes payable in 1949 or any preceding year, which ad valorem tax liability tax for any such years shall remain payable and collectible in the same manner as though this chapter had not been passed. [1967 ex.s. c 9 § 6; 1961 c 15 § 82.48.110. Prior: 1949 c 49 § 13; Rem. Supp. 1949 § 11219-43.]

Chapter 82.49

WATERCRAFT EXCISE TAX

Sections
82.49.010 Excise tax imposed.

82.49.020	Exemptions.
82.49.030	Payment of tax—Deposit in general fund.
82.49.040	Depreciation schedule for use in determining fair market value.
82.49.050	Appraisal of vessel by department of revenue.
82.49.060	Disputes as to appraised value—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.
82.49.070	Local excise tax authorized.
82.49.900	Construction—Severability—Effective dates—1983 c 7.

Exemption of ships and vessels from ad valorem taxes: RCW 84.36-.079, 84.36.080, and 84.36.090.

82.49.010 Excise tax imposed. An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49-.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater.

The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year. The excise tax on vessels required to be registered in this state on June 30, 1983, shall be paid by June 30, 1983. [1983 2nd ex.s. c 3 § 42; 1983 c 7 § 9.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Credit for 1983 property taxes paid for vessels—1983 c 7: "Property taxes paid for a vessel for 1983 shall be allowed as a credit against tax due under section 9 of this act for the same vessel." [1983 c 7 § 25.] "Section 9 of this act" consists of the enactment of RCW 82.49.010.

82.49.020 Exemptions. The following are exempt from the tax imposed under this chapter:

(1) Vessels exempt from the registration requirements of chapter 88.02 RCW;

(2) Vessels used exclusively for commercial fishing purposes;

(3) Vessels under sixteen feet in overall length;

(4) Vessels owned and operated by the United States, a state of the United States, or any municipality or political subdivision thereof;

(5) Vessels owned by a nonprofit organization or association engaged in character building of boys and girls under eighteen years of age and solely used for such purposes, as determined by the department for the purposes of RCW 84.36.030; and

(6) Vessels owned and held for sale by a dealer, but not rented on a regular commercial basis. [1984 c 250 § 1; 1983 2nd ex.s. c 3 § 43.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 82.49.020(2): RCW 84.36.080.

82.49.030 Payment of tax—Deposit in general fund. The excise tax imposed under this chapter is due and payable to the department of licensing or its agents at the time of registration of a vessel. The department of licensing shall not issue or renew a registration for a vessel until the tax is paid in full.

The excise tax collected under this chapter shall be deposited in the general fund. [1983 c 7 § 10.]

82.49.040 Depreciation schedule for use in determining fair market value. The department of revenue shall prepare at least once each year a depreciation schedule for use in the determination of fair market value for the purposes of this chapter. The schedule shall be based upon information available to the department of revenue pertaining to the current fair market value of vessels. The fair market value of a vessel for the purposes of this chapter shall be based on the most recent purchase price depreciated according to the year of the most recent purchase of the vessel. The most recent purchase price is the consideration, whether money, credit, rights, or other property expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the vessel. [1983 c 7 § 11.]

82.49.050 Appraisal of vessel by department of revenue. (1) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department of revenue shall appraise the vessel before registration.

(2) If after registration the department of revenue determines that the purchase price stated by the owner is not a reasonable representation of the true fair market value of a vessel at the time of purchase, the department of revenue shall appraise the vessel.

(3) If a vessel is homemade, the owner shall make a notarized declaration of fair market value. The fair market value of the vessel for the purposes of this chapter shall be the declared value, unless after registration the department of revenue determines that the declared value is not a reasonable representation of the true fair market value of the vessel in which case the department of revenue shall appraise the vessel.

(4) If the department of revenue appraises a vessel, the fair market value of the vessel for the purposes of this chapter shall be the appraised value. If the vessel has been registered before appraisal, the department of revenue shall refund any overpayment of tax to the owner or notify the owner of any additional tax due. The owner shall pay any additional tax due within thirty days after notification by the department. [1983 c 7 § 12.]

82.49.060 Disputes as to appraised value—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal. (1) Any vessel owner disputing an appraised value under RCW 82.49-.050 may petition for a conference with the department as provided under RCW 82.32.160, or for reduction of the tax due as provided under RCW 82.32.170.

(2) Any vessel owner having received a notice of denial of a petition or a notice of determination made for the owner's vessel under RCW 82.32.160 or 82.32.170 may appeal to the board of tax appeals as provided under RCW 82.03.190. In deciding a case appealed under this section, the board of tax appeals may require an independent appraisal of the vessel. The cost of the independent appraisal shall be apportioned between the department and the vessel owner as provided by the board. [1983 c 7 § 13.]

82.49.070 Local excise tax authorized. (1) Any county may impose a tax, by ordinance or resolution, upon the privilege of using a vessel taxable under RCW 82.49.010 which is moored or stored in the county, if the population of the unincorporated area of the county together with the population of the cities which are parties to an interlocal agreement under chapter 39.34 RCW equal or exceed two-thirds of the total population of the county: *Provided*, That such agreement shall take into consideration any marine patrols provided as of June 30, 1983, and may provide compensation for those municipal corporations in the county which are parties to the agreement and which provide boating safety services, including fire suppression and rescue services only as related to boating safety. The annual amount of the tax shall be up to fifty cents per foot of the vessel per calendar year, or part thereof.

(2) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year.

(3) The moneys collected under this section shall be distributed by the county monthly to the parties to the interlocal agreement, and other municipal corporations entitled to compensation, according to the terms of the agreement. Moneys collected under this section shall be used only for administration and enforcement of boating safety, search and rescue operations concerning boating, and boating patrols. [1985 c 7 § 155; 1984 c 250 § 4; 1983 2nd ex.s. c 3 § 49.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.49.900 Construction—Severability—Effective dates—1983 c 7. See notes following RCW 82.08.020.

Chapter 82.50

MOBILE HOMES, TRAVEL TRAILERS, AND CAMPERS EXCISE TAX

Sections	
82.50.010	Definitions.
82.50.060	Tax additional.
82.50.090	Unlawful issuance of tax receipt—Penalty.
82.50.170	Refund procedure—Penalty for false statement.
82.50.250	Term "house trailer" construed.

TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.400	Tax imposed—Collection—Transfer of ownership.
82.50.410	Rate—Minimum payable—Dealer tax.
82.50.420	Classification and schedule—Basis.
82.50.430	Amount on unclassified travel trailers or campers.
82.50.440	Tax receipt—Records.
82.50.460	Notice of amount of tax payable—Contents.
82.50.510	Remittance of tax to state—Distribution to cities, counties and schools.
82.50.520	Exemptions.
82.50.530	Ad valorem taxes prohibited as to mobile homes, travel trailers or campers.
82.50.540	Taxed and licensed travel trailers or campers entitled to use of streets and highways.

CONSTRUCTION OF 1971 ACT

82.50.901	Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35–76.
82.50.903	Schedule of repeals—Construction.

"Registration year", defined—"Last day of the month", defined: RCW 46.16.006.

82.50.010 Definitions. "Mobile home" means a structure, transportable in one or more sections, which is thirty-two body feet or more in length and is eight body feet or more in width, and which is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, except as hereinafter specifically excluded, and excluding modular homes as defined below.

"Travel trailer" means all trailers of the type designed to be used upon the public streets and highways which are capable of being used as facilities for human habitation and which are less than thirty-two body feet in length and eight body feet or less in width, except as may be hereinafter specifically excluded.

"Modular home" means any factory-built housing designed primarily for residential occupancy by human beings which does not contain a permanent frame and must be mounted on a permanent foundation.

"Camper" means a structure designed to be mounted upon a motor vehicle which provides facilities for human habitation or for temporary outdoor or recreational lodging and which is five feet or more in overall length and five feet or more in height from its floor to its ceiling when fully extended, but shall not include motor homes as defined in this section.

"Motor homes" means motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation.

"Director" means the director of licensing of the state. [1979 c 107 § 11; 1977 ex.s. c 22 § 6; 1971 ex.s. c 299 §

35; 1967 ex.s. c 149 § 44; 1961 c 15 § 82.50.010. Prior: 1957 c 269 § 1; 1955 c 139 § 1.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

Effective dates—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.50.060 Tax additional. Except as provided herein, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.50.060. Prior: 1955 c 139 § 6.]

82.50.090 Unlawful issuance of tax receipt—Penalty. It shall be unlawful for the county auditor or any person to issue a receipt hereunder to any person without collecting the amount of the excise tax due thereon under the provisions of this chapter and any violation of this section shall constitute a gross misdemeanor. [1961 c 15 § 82.50.090. Prior: 1957 c 269 § 11; 1955 c 139 § 9.]

82.50.170 Refund procedure—Penalty for false statement. In case a claim is made by any person that he has erroneously paid the tax or a part thereof or any charge hereunder, he may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department. The department shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount, and the treasurer shall make such approved refund herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

Any person making any false statement in the affidavit herein mentioned, under which he obtains any amount of refund to which he is not entitled under the provisions of this section, shall be guilty of a gross misdemeanor. [1981 c 260 § 16. Prior: 1975 1st ex.s. c 278 § 97; 1975 1st ex.s. c 9 § 1; 1974 ex.s. c 54 § 9; 1961 c 15 § 82.50.170; prior: 1955 c 139 § 17.]

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Severability—**Effective dates**—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.50.250 Term "house trailer" construed. Whenever this chapter refers to chapters 46.12, 46.16, or 82.44 RCW, with references to "house trailers", the term "house trailer" as used in those chapters shall be construed to include and embrace "mobile home and travel trailer" as used in *this amendatory act. [1967 ex.s. c 149 § 59.]

***Reviser's note:** "This amendatory act" [1967 ex.s. c 149] consists of the 1967 amendments to RCW 28.45.035, 28.45.040, 82.04.050, 82.04.130, 82.04.190, 82.04.230-82.04.290, 82.04.410, 82.04.440, 82.08.010-82.08.030, 82.12.020, 82.12.030, 82.16.020, 82.16.050, 82.32.090, 82.48.020, 82.50.010-82.50.050, 82.50.070, 82.50.101, 82.50.105, 82.50.110-82.50.140, 82.50.180-82.50.200, 83.44.010, 84.08.030, 84.36.010, 84.36.150, 84.36.171, 84.40.020, 84.40.040, 84.40.060, 84.40.130, 84.40.190, and 84.40.340; the enactment of RCW 28.45.105, 28.45.120, 82.04.432, 82.50.185, 82.50.250, 82.50.260, 82.98.035, 84.36.176,

84.36.260, 84.40.185, and 84.40.335; and the repeal of RCW 82.04.295, 82.04.296, 82.16.025, 82.16.026, 84.40.050, 84.40.140, 84.40.180, and 84.40.260.

TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.400 Tax imposed—Collection—Transfer of ownership. An annual excise tax is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter prorated to comply with the effective date of the annual schedule prepared pursuant to RCW 82.44.040, and no dealer's license or license plates, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. [1979 c 123 § 1; 1975 1st ex.s. c 118 § 15; 1971 ex.s. c 299 § 55.]

Effective date—**Severability**—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

82.50.410 Rate—Minimum payable—Dealer tax. The rate and measure of tax imposed by this chapter for each registration year shall be one percent of the fair market value of the travel trailer or camper, as determined in the manner provided in this chapter: *Provided*, That the excise tax upon a travel trailer or camper licensed for the first time in this state after the last day of any registration month may only be levied for the remaining months of the registration year including the month in which the travel trailer or camper is first licensed: *Provided further*, That the minimum amount of tax payable shall be two dollars: *Provided further*, That every dealer in mobile homes or travel trailers, for the privilege of using any mobile home or travel trailer eligible to be used under a dealer's license plate, shall pay an excise tax of two dollars, and such tax shall be collected upon the issuance of each original dealer's license plate, and also a similar tax shall be collected upon the issuance of each dealer's duplicate license plate, which taxes shall be in addition to any tax otherwise payable under this chapter.

A travel trailer or camper shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year or any part thereof immediately preceding the registration year in which application for license is made or

when it has been registered in another jurisdiction subsequent to any prior registration in this state. [1979 c 123 § 2; 1975 1st ex.s. c 118 § 16; 1972 ex.s. c 144 § 2; 1971 ex.s. c 299 § 56.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.50.420 Classification and schedule—Basis. The classification and schedule prepared under RCW 82.44.040 for travel trailers or campers used as facilities for human habitation shall be the schedule used by the county auditors and the director for determining the amount of tax due hereunder. [1971 ex.s. c 299 § 57.]

82.50.430 Amount on unclassified travel trailers or campers. The tax hereunder for any travel trailer or camper not classified as provided in RCW 82.44.040 shall be determined as provided in RCW 82.44.050 for travel trailers or campers used as facilities for human habitation. [1971 ex.s. c 299 § 58.]

82.50.440 Tax receipt—Records. The county auditor or the department of licensing upon payment of the tax hereunder shall issue a receipt which shall include such information as may be required by the director, including the name of the taxpayer and a description of the travel trailer or camper, which receipt shall be printed by the department of licensing in such form as it deems proper and furnished by the department to the various county auditors of the state. The county auditor shall keep a record of the excise taxes paid hereunder during the calendar year. [1979 c 158 § 242; 1975 1st ex.s. c 9 § 2; 1971 ex.s. c 299 § 59.]

82.50.460 Notice of amount of tax payable—Contents. Prior to the end of any registration year of a vehicle, the director shall cause to be mailed to the owners of travel trailers or campers, of record, notice of the amount of tax payable during the succeeding registration year. The notice shall contain a legal description of the travel trailer or camper, prominent notice of due dates, and such other information as may be required by the director. [1979 c 123 § 3; 1975 1st ex.s. c 118 § 17; 1971 ex.s. c 299 § 61.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.50.510 Remittance of tax to state—Distribution to cities, counties and schools. The county auditor shall regularly, when remitting motor vehicle excise taxes, pay to the state treasurer the excise taxes collected under this chapter. The treasurer shall then distribute such funds quarterly on the first day of the month of January, April, July and October of each year in the following amount: Fifteen percent to cities and towns for the use thereof apportioned ratably among such cities and towns on the basis of population; fifteen percent to counties for the use thereof to be apportioned ratably among such counties on the basis of moneys collected in such counties from the excise taxes imposed under this chapter; and seventy percent for schools to be

deposited in the state general fund. [1975-'76 2nd ex.s. c 75 § 1; 1971 ex.s. c 299 § 66.]

82.50.520 Exemptions. The following travel trailers or campers are specifically exempted from the operation of this chapter:

(1) Any unoccupied travel trailer or camper when it is part of an inventory of travel trailers or campers held for sale by a manufacturer or dealer in the course of his business.

(2) A travel trailer or camper owned by any government or political subdivision thereof.

(3) A travel trailer or camper owned by a nonresident and currently licensed in another state, unless such travel trailer or camper is required by law to be licensed in this state.

For the purposes of this subsection only, a camper owned by a nonresident shall be considered licensed in another state if the vehicle to which such camper is attached is currently licensed in another state.

(4) Travel trailers eligible to be used under a dealer's license plate, and taxed under RCW 82.44.030 while so eligible. [1983 c 26 § 4; 1979 c 123 § 4; 1971 ex.s. c 299 § 67.]

82.50.530 Ad valorem taxes prohibited as to mobile homes, travel trailers or campers. No mobile home, travel trailer, or camper which is a part of the inventory of mobile homes, travel trailers, or campers held for sale by a dealer in the course of his business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. [1981 c 304 § 32; 1971 ex.s. c 299 § 68.]

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

82.50.540 Taxed and licensed travel trailers or campers entitled to use of streets and highways. Travel trailers or campers taxed and licensed under the provisions of this chapter shall be entitled to the use of the public streets and highways subject to the provisions of the motor vehicle laws of this state except as herein otherwise provided. [1971 ex.s. c 299 § 69.]

CONSTRUCTION OF 1971 ACT

82.50.901 Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35-76. (1) Sections 35 through 52 and section 54 of this 1971 amendatory act shall take effect on July 1, 1971, except that the provisions of chapter 82.50 RCW imposing a tax on campers shall not take effect until January 1, 1972.

(2) Sections 36 through 50 of this 1971 amendatory act shall be operative and in effect only until and including December 31, 1972, at which time, they, in their entirety, shall expire without any further action of the legislature. The expiration of such sections shall not be construed as affecting any existing right acquired under the expired statutes, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order

promulgated thereunder, nor any administrative action taken thereunder.

(3) Sections 55 through 76 of this 1971 amendatory act shall take effect on January 1, 1973 without any further action of the legislature. [1971 ex.s. c 299 § 53.]

82.50.903 Schedule of repeals—Construction. At the expiration of December 31, 1972 and simultaneously with the taking effect of sections 55 through 76 of this 1971 amendatory act, the following acts and parts of acts are hereby repealed:

(1) Section 82.50.020, chapter 15, Laws of 1961, section 45, chapter 149, Laws of 1967 ex. sess., section 1, chapter 69, Laws of 1969 and RCW 82.50.020;

(2) Section 82.50.030, chapter 15, Laws of 1961, section 7, chapter 199, Laws of 1963, section 29, chapter 173, Laws of 1965 ex. sess., section 46, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.030;

(3) Section 82.50.040, chapter 15, Laws of 1961, section 47, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.040;

(4) Section 82.50.050, chapter 15, Laws of 1961, section 48, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.050;

(5) Section 82.50.070, chapter 15, Laws of 1961, section 49, chapter 149, Laws of 1967 ex. sess., section 2, chapter 69, Laws of 1969 and RCW 82.50.070;

(6) Section 82.50.101, chapter 15, Laws of 1961, section 50, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.101;

(7) Section 82.50.105, chapter 15, Laws of 1961, section 8, chapter 199, Laws of 1963, section 1, chapter 92, Laws of 1965 ex. sess., section 51, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.105;

(8) Section 82.50.110, chapter 15, Laws of 1961, section 2, chapter 92, Laws of 1965 ex. sess., section 52, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.110;

(9) Section 82.50.120, chapter 15, Laws of 1961, section 9, chapter 199, Laws of 1963, section 53, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.120;

(10) Section 82.50.130, chapter 15, Laws of 1961, section 54, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.130;

(11) Section 82.50.140, chapter 15, Laws of 1961, section 55, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.140;

(12) Section 82.50.160, chapter 15, Laws of 1961, section 1, chapter 274, Laws of 1969 ex. sess. and RCW 82.50.160;

(13) Section 82.50.180, chapter 15, Laws of 1961, section 56, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.180;

(14) Section 28, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.185;

(15) Section 82.50.190, chapter 15, Laws of 1961, section 57, chapter 149, Laws of 1967 ex. sess., section 1, chapter 225, Laws of 1969 ex. sess. and RCW 82.50.190; and

(16) Section 82.50.200, chapter 15, Laws of 1961, section 58, chapter 149, Laws of 1967 ex. sess. and RCW 82.50.200.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1971 ex.s. c 299 § 76.]

Chapter 82.52

EXTENSION OF EXCISES TO FEDERAL AREAS

Sections

82.52.010	State accepts provisions of federal (Buck) act.
82.52.020	State's tax laws made applicable to federal areas— Exception.

Federal areas and jurisdiction: Title 37 RCW.

Taxation of federal agencies and instrumentalities: State Constitution Art. 7 §§ 1, 3.

82.52.010 State accepts provisions of federal (Buck) act. The state hereby accepts jurisdiction over all federal areas located within its exterior boundaries to the extent that the power and authority to levy and collect taxes therein is granted by that certain act of the 76th congress of the United States, approved by the president on October 9, 1940, and entitled: "An Act to permit the states to extend their sales, use, and income taxes to persons residing or carrying on business, or to transactions occurring, in federal areas, and for other purposes." [1961 c 15 § 82.52.010. Prior: 1941 c 175 § 1; Rem. Supp. 1941 § 11337-10.]

82.52.020 State's tax laws made applicable to federal areas—Exception. From and after January 1, 1941, all laws of this state relating to revenue and taxation which, except for this chapter and the act of congress described herein, would not be operative within federal areas, are hereby extended to, and shall be construed as being operative in and upon all lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States located within the exterior boundaries of the state, to the same extent and with the same effect as though such area was not a federal area: *Provided*, That nothing in this section shall be construed as extending the provisions of this title to the gross income received from, or to sales made for use in performing within a federal military or naval reservation, any contract entered into with the United States of America, or any department or agency thereof or any subcontract made pursuant thereto for which a bid covering such contract or subcontract was submitted prior to October 9, 1940. [1961 c 15 § 82.52.020. Prior: 1941 c 175 § 2; Rem. Supp. 1941 § 11337-11.]

Chapter 82.56
MULTISTATE TAX COMPACT

Sections

82.56.010	Compact.
82.56.020	Director of revenue to represent state.
82.56.030	Director may be represented by alternate.
82.56.040	Political subdivisions—Appointment of persons to represent—Consultations with.
82.56.050	Interstate audits article of compact declared to be in force in this state.

82.56.010 Compact. The following multistate tax compact, and each and every part thereof, is hereby approved, ratified, adopted, entered into and enacted into law by the state of Washington.

MULTISTATE TAX COMPACT

Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately

stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

**Article III. Elements of Income Tax Laws.
Taxpayer Option, State and Local Taxes.**

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real

value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division of Income.

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from

business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing,

or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency

charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the

bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and

the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this article: *Provided*, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant

written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: *Provided*, That such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make

the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve

if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in

dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X. Entry into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: *Provided*, That the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and

in full force and effect as to the state affected as to all severable matters. [1967 c 125 § 1.]

82.56.020 Director of revenue to represent state. The director of revenue shall represent this state on the multistate tax commission. [1979 c 107 § 12; 1967 c 125 § 2.]

82.56.030 Director may be represented by alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads. [1967 c 125 § 3.]

82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with. The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact. The member of the commission representing this state, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact. [1967 c 125 § 4.]

82.56.050 Interstate audits article of compact declared to be in force in this state. Article VIII of the multistate tax compact relating to interaudits shall be in force in and with respect to this state. [1967 c 125 § 5.]

Chapter 82.60

TAX DEFERRALS FOR INVESTMENT PROJECTS IN DISTRESSED AREAS

Sections	
82.60.010	Legislative findings and declaration.
82.60.020	Definitions.
82.60.030	Application for deferral—Contents.
82.60.040	Issuance of tax deferral certificate.
82.60.050	Expiration of RCW 82.60.030 and 82.60.040.
82.60.060	Repayment schedule.
82.60.065	Tax deferral on construction labor—Repayment forgiven.
82.60.070	Reports by recipients—Assessment of taxes, interest.
82.60.080	Determinations of employment and wages.
82.60.090	Applicability of general administrative provisions.
82.60.100	Applications, reports, and information subject to disclosure.
82.60.900	Effective date, applicability—1985 c 232.
<i>Tax deferrals for manufacturing, research, and development projects: Chapter 82.61 RCW.</i>	
<i>Tax credits for eligible business projects: Chapter 82.62 RCW.</i>	

82.60.010 Legislative findings and declaration. The legislature finds that there are several areas in the state that are characterized by very high levels of unemployment and poverty. The legislative [legislature] further finds that economic stagnation is the primary cause of this high unemployment rate and poverty; that new state policies are necessary in order to promote economic stimulation and new employment opportunities in these

distressed areas; and that policies providing incentives for economic growth in these distressed areas are essential. For these reasons, the legislature hereby establishes a tax deferral program to be effective solely in distressed areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified number of jobs. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and reducing poverty in the distressed areas of the state. [1985 c 232 § 1.]

82.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent.

(4)(a) "Eligible investment project" means that portion of an investment project which:

(i) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(ii) Either initiates a new operation, or expands or diversifies a current operation by expanding or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement; or

(iii) Acquires machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure: *Provided*, That the lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(b) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5) or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and shall include the production or fabrication of specially made or custom made articles. "Manufacturing" also includes computer programming, the production of computer software, and

other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means new structures used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(11) "Recipient" means a person receiving a tax deferral under this chapter.

(12) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [1986 c 116 § 12; 1985 c 232 § 2.]

Severability—1986 c 116: See RCW 82.62.900.

82.60.030 Application for deferral—Contents. (Expires July 1, 1991.) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [1985 c 232 § 3.]

82.60.040 Issuance of tax deferral certificate. (Expires July 1, 1991.) (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and

82.14 RCW on each eligible investment project located in an eligible area.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [1986 c 116 § 13; 1985 c 232 § 4.]

Severability—1986 c 116: See RCW 82.62.900.

82.60.050 Expiration of RCW 82.60.030 and 82.60.040. RCW 82.60.030 and 82.60.040 shall expire July 1, 1991. [1985 c 232 § 10.]

82.60.060 Repayment schedule. (1) The recipient shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. [1985 c 232 § 5.]

82.60.065 Tax deferral on construction labor—Repayment forgiven. Notwithstanding any other provision of this chapter, taxes deferred under this chapter on the sale or use of labor that is directly used in the construction of an investment project for which a deferral has been granted under this chapter after June 11, 1986, need not be repaid. [1986 c 116 § 14.]

Severability—1986 c 116: See RCW 82.62.900.

82.60.070 Reports by recipients—Assessment of taxes, interest. (1) Each recipient shall submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this

chapter for reasons other than failure to create the required number of qualified employment positions, the amount of deferred taxes outstanding for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department shall assess interest, but not penalties, on the deferred taxes for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid. [1985 c 232 § 6.]

82.60.080 Determinations of employment and wages. The department of employment security shall make, and certify to the department of revenue, all determinations of employment and wages required under this chapter. [1985 c 232 § 7.]

82.60.090 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [1985 c 232 § 8.]

82.60.100 Applications, reports, and information subject to disclosure. Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [1987 c 49 § 1.]

82.60.900 Effective date, applicability—1985 c 232. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, provided that no taxes may be deferred prior to July 1, 1985. [1985 c 232 § 11.]

Reviser's note: The effective date of 1985 c 232 is May 10, 1985.

Chapter 82.61

TAX DEFERRALS FOR MANUFACTURING, RESEARCH, AND DEVELOPMENT PROJECTS

Sections	
82.61.010	Definitions.
82.61.020	Application for deferral—Contents—Initiation of construction.
82.61.030	Tax deferral—Eligibility.
82.61.040	Expiration of RCW 82.61.020 and 82.61.030.
82.61.050	Issuance of tax deferral certificate.
82.61.060	Repayment schedule.
82.61.070	Reports.
82.61.080	Applicability of general administrative provisions.
82.61.090	Applications and information subject to disclosure.
82.61.900	Severability—1987 c 497.

Tax deferrals for investment projects in distressed areas: Chapter 82.60 RCW.

Tax credits for eligible business projects: Chapter 82.62 RCW.

82.61.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Person" has the meaning given in RCW 82.04.030.

(3) "Department" means the department of revenue.

(4) "Eligible investment project" means:

(a) Construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1988; or

(b) Acquisition prior to December 31, 1988, of new machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure: *Provided*, That the lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(c) Acquisition of all new or used machinery, equipment, or other personal property for use in the production or casting of aluminum at an aluminum smelter or at facilities related to an aluminum smelter, if the plant was in operation prior to 1975 and has ceased operations or is in imminent danger of ceasing operations for economic reasons, as determined by the department, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represented employees of the plant pursuant to a collective bargaining agreement that was in effect either immediately prior to the time the plant ceased operations or during the period when the plant was in imminent danger of ceasing operations, on the proposed operation of the plant and on the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter or has received a concurrence waiver from the department of trade and economic development; or

(d) Modernization projects involving construction, acquisition, or upgrading of equipment or machinery, including services and labor, which are commenced after May 19, 1987, and are intended to increase the operating efficiency of existing plants which are either aluminum smelters or aluminum rolling mills or of facilities related to such plants, if the plant was in operation prior to 1975, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represents employees of the plant on the proposed operation of the plant and the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter or has received a concurrence waiver from the department of trade and economic development.

(5) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and includes the production or fabrication of specially made or custom-made articles.

(6) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(7) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(8) "Machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery. For purposes of this chapter, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment may be treated as new equipment and machinery if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.

(10) "Recipient" means a person receiving a tax deferral under this chapter.

(11) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(12) "Operationally complete" means constructed or improved to the point of being functionally useable for the intended purpose.

(13) "Initiation of construction" means that date upon which on-site construction commences.

(14) "Concurrence waiver" means a written waiver of an otherwise required concurrence from a bargaining unit. The department of trade and economic development may issue a concurrence waiver only if:

(a) The department determines an applicant has made a good faith effort to obtain the required concurrence from a bargaining unit; and

(b) The department determines that granting the concurrence waiver is clearly in the best interests of the people of this state. [1987 c 497 § 1; 1986 c 116 § 9; 1985 ex.s. c 2 § 1.]

Severability—1986 c 116: See RCW 82.62.900.

82.61.020 Application for deferral—Contents—Initiation of construction. (Expires July 1, 1988.) Application for deferral of taxes under this chapter shall be made before initiation of the construction of the investment project or acquisition of equipment or machinery or plant. Application for deferral of taxes for modernization projects as defined in RCW 82.61.010(4)(d) shall be made during the calendar year in which construction begins or acquisition of equipment or machinery occurs. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. A certificate holder shall initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate. [1987 c 497 § 2; 1985 ex.s. c 2 § 2.]

82.61.030 Tax deferral—Eligibility. (Expires July 1, 1988.) Except for eligible projects within the definitions in RCW 82.61.010(4) (c) or (d), a tax deferral certificate shall only be issued to persons who, on June 14, 1985, are not engaged in manufacturing or research and development activities within this state. For purposes of this section, a person shall not be considered to be engaged in manufacturing or research and development activities where the only activities performed by such person in this state are sales, installation, repair, or promotional activities in respect to products manufactured outside this state. Any person who has succeeded by merger, consolidation, incorporation or any other form or change of identity to the business of a person engaged in manufacturing or research and development activities in this state on June 14, 1985, and any person who is a subsidiary of a person engaged in manufacturing or research and development activities in this state on June 14, 1985, shall also be ineligible to receive a tax deferral certificate. [1987 c 497 § 3; 1985 ex.s. c 2 § 3.]

82.61.040 Expiration of RCW 82.61.020 and 82.61.030. RCW 82.61.020 and 82.61.030 shall expire July 1, 1988. [1986 c 116 § 10; 1985 ex.s. c 2 § 8.]

Severability—1986 c 116: See RCW 82.62.900.

82.61.050 Issuance of tax deferral certificate. The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project. The use of the certificate shall be

governed by rules established by the department. [1985 ex.s. c 2 § 4.]

82.61.060 Repayment schedule. (1) The recipient shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project is operationally complete or the plant resumes operation, as appropriate. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. [1987 c 497 § 4; 1985 ex.s. c 2 § 5.]

82.61.070 Reports. The department and the department of trade and economic development shall jointly report to the legislature about the effects of this chapter on new manufacturing and research and development activities in this state. The report shall contain information concerning the number of deferral certificates granted, the amount of sales tax deferred, the number of jobs created and other information useful in measuring such effects. Reports shall be submitted by January 1, 1986, and by January 1 of each year through 1989. [1986 c 116 § 11; 1985 ex.s. c 2 § 6.]

Severability—1986 c 116: See RCW 82.62.900.

82.61.080 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [1985 ex.s. c 2 § 7.]

82.61.090 Applications and information subject to disclosure. Applications and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [1987 c 49 § 2.]

82.61.900 Severability—1987 c 497. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 497 § 5.]

Chapter 82.62
TAX CREDITS FOR ELIGIBLE BUSINESS PROJECTS

Sections	
82.62.010	Definitions.
82.62.020	Application for tax credits—Contents.
82.62.030	Allowance of tax credits—Limitations.
82.62.040	Expiration of RCW 82.62.020 and 82.62.030.
82.62.050	Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients.
82.62.060	Employment security department to make employment and wage determinations.
82.62.070	Applicability of general administrative provisions.
82.62.080	Applications, reports, and other information subject to disclosure.
82.62.900	Severability—1986 c 116.
82.62.901	Effective date—1986 c 116 §§ 15–20.

82.62.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility: *Provided*, That the applicant's average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the year for which the credit is being sought than the applicant's average full-time qualified employment positions at the same facility in the immediately preceding year.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(5) or that portion of a business project creating qualified full-time employment positions outside an eligible area or those recipients of a sales tax deferral under chapter 82.61 RCW.

(5) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and shall include the production or fabrication of specially made or custom made articles. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(6) "Person" has the meaning given in RCW 82.04.030.

(7) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during the entire tax year.

(8) "Tax year" means the calendar year in which taxes are due.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [1986 c 116 § 15.]

82.62.020 Application for tax credits—Contents. (Expires July 1, 1988.) Application for tax credits under this chapter must be made before the actual hiring of qualified employment positions. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the business project, the applicant's average employment, if any, at the facility for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [1986 c 116 § 16.]

82.62.030 Allowance of tax credits—Limitations. (Expires July 1, 1988.) (1) A person shall be allowed a credit against the tax due under chapter 82.04 RCW of an amount equal to one thousand dollars for each qualified employment position directly created in an eligible business project.

(2) The department shall keep a running total of all credits granted under this chapter during each fiscal biennium. The department shall not allow any credits which would cause the tabulation for a biennium to exceed fifteen million dollars. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over for approval the next biennium. However, the applicant's carryover into the next biennium is only permitted if the tabulation for the next biennium does not exceed fifteen million dollars as of the date on which the department has disallowed the application.

(3) No recipient is eligible for tax credits in excess of three hundred thousand dollars.

(4) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(5) No recipient may receive a tax credit on taxes which have not been paid during the taxable year. [1986 c 116 § 17.]

82.62.040 Expiration of RCW 82.62.020 and 82.62.030. RCW 82.62.020 and 82.62.030 shall expire July 1, 1988. [1986 c 116 § 22.]

82.62.050 Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients. (1) Each recipient shall submit a report to the department on December 31st of each year. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which a credit has been used to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that a business project is not eligible for tax credit under this chapter for reasons other than failure to create the required number of qualified employment positions, the amount of taxes for which a credit has been used for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that a business project has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the credited taxes for which a credit has been used for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of the tax credit, and shall accrue until the taxes for which a credit has been used are repaid. [1986 c 116 § 18.]

82.62.060 Employment security department to make employment and wage determinations. The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages required under this chapter. [1986 c 116 § 19.]

82.62.070 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the administration of this chapter. [1986 c 116 § 20.]

82.62.080 Applications, reports, and other information subject to disclosure. Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [1987 c 49 § 3.]

82.62.900 Severability—1986 c 116. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 116 § 23.]

82.62.901 Effective date—1986 c 116 §§ 15–20. Sections 15 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986. [1986 c 116 § 24.]

Reviser's note: "Sections 15 through 20 of this act" consist of the enactment of RCW 82.62.010, 82.62.020, 82.62.030, 82.62.050, 82.62.060, and 82.62.070.

Chapter 82.98 CONSTRUCTION

Sections	
82.98.010	Continuation of existing law.
82.98.020	Title, chapter, section headings not part of law.
82.98.030	Invalidity of part of title not to affect remainder.
82.98.035	Saving—1967 ex.s. c 149.
82.98.040	Repeals and saving.
82.98.050	Emergency—1961 c 15.

82.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 15 § 82.98.010.]

82.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 15 § 82.98.020.]

82.98.030 Invalidity of part of title not to affect remainder. If any chapter, section, subdivision of a section, paragraph, sentence, clause or word of this title for any reason shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of this title but shall be confined in its operation to the chapter, section, subdivision of a section, paragraph, sentence, clause or word of the title directly involved in the controversy in which such judgment shall have been rendered. If any tax imposed under this title shall be adjudged invalid as to any person, corporation, association or class of persons, corporations or associations included within the scope of the general language of this title such invalidity shall not affect the liability of any person, corporation, association or class of persons, corporations, or associations as to which such tax has not been adjudged invalid. It is hereby expressly declared that had any chapter, section, subdivision of a section, paragraph, sentence, clause, word or any person, corporation, association or class of persons, corporations or associations as to which this title is declared invalid been eliminated from the title at the time the same was considered the title would have nevertheless been enacted with such portions eliminated. This section shall not apply to chapter 82.44 RCW. [1961 c 15 § 82.98.030.]

Severability—1967 ex.s. c 149: "If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1967 ex.s. c 149 § 64.] This applies to the 1967 amendments to RCW 28A.45.035, 28A.45.040, 82.04.050, 82.04.130, 82.04.190, 82.04.230–82.04.290, 82.04.410, 82.04.440, 82.08.010–82.08.030, 82.12.020, 82.12.030, 82.16.020, 82.16.050, 82.32.090, 82.48.020, 82.50.010–82.50.050, 82.50.070, 82.50.101, 82.50.105, 82.50.110–82.50.140, 82.50.180–82.50.200, 83.44.010, 84.08.030, 84.36.010, 84.36.150, 84.36.171, 84.40.020, 84.40.040, 84.40.060, 84.40.130, 84.40.190, 84.40.340; the enactment of RCW 28.45.105,

28.45.120, 82.04.432, 82.50.185, 82.50.250, 82.50.260, 82.98.035, 84.36.176, 84.36.260, 84.40.185, 84.40.335; and the repeal of RCW 82.04.295, 82.04.296, 82.16.025, 82.16.026, 84.40.050, 84.40.140, 84.40.180 and 84.40.260.

Severability—1965 ex.s. c 173: "If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1965 ex.s. c 173 § 32.] This applies to RCW 82.04.050, 82.04.100, 82.04.120, 82.04.190, 82.04.240, 82.04.260, 82.04.330, 82.04.400, 82.04.415, 82.04.425, 82.04.430, 82.04.440, 82.08.020, 82.08.030, 82.08.050, 82.08.150, 82.12.010–82.12.030, 82.16.010, 82.16.020, 82.16.050, 82.24.020, 82.24.070, 82.26.020, 82.32.060, 82.48.100, 82.50.030, 66.24.290, and 84.36.250.

Severability—1965 ex.s. c 141: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1965 ex.s. c 141 § 9.] This applies to RCW 82.32.050, 82.32.080–82.32.105, 82.32.180, 82.32.190 and 82.32.340.

Severability—1961 ex.s. c 24: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 ex.s. c 24 § 15.] This applies to RCW 82.04.050, 82.08.150, 82.24.020, 82.24.070 and 84.40.340.

Severability—1961 ex.s. c 7: "If any provision of this act or the application thereof to any person, firm or corporation or circumstance is held invalid, in whole or in part, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared to be severable.

If any provision of this act shall be declared unconstitutional or ineffective in whole or in part by a court of competent jurisdiction then to the extent that it is unconstitutional or ineffective, such provisions shall not be enforced, nor shall such determination be deemed to invalidate the remaining provisions of this act." [1961 ex.s. c 7 § 23.] This applies to RCW 82.36.020, 82.36.100, 82.40.020, 82.40.290, 46.16.060, 46.16.065, 46.16.070, 46.16.072, 46.16.075, 46.16.120, 46.44.095, 46.68.030, 46.68.090, 46.68.100, 46.68.110, 46.68.130 and 47.60.350–47.60.390.

82.98.035 Saving—1967 ex.s. c 149. Nothing in *this 1967 amendatory act shall be construed to affect any existing rights acquired or any existing liabilities incurred under the sections amended or repealed herein, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule or regulation promulgated thereunder, nor any administrative action taken thereunder. [1967 ex.s. c 149 § 63.]

***Reviser's note:** "This 1967 amendatory act" [1967 ex.s. c 149] consists of the 1967 amendments to RCW 28.45.035, 28.45.040, 82.04.050, 82.04.130, 82.04.190, 82.04.230–82.04.290, 82.04.410, 82.04.440, 82.08.010–82.08.030, 82.12.020, 82.12.030, 82.16.020, 82.16.050, 82.32.090, 82.48.020, 82.50.010–82.50.050, 82.50.070, 82.50.101, 82.50.105, 82.50.110–82.50.140, 82.50.180–82.50.200, 83.44.010, 84.08.030, 84.36.010, 84.36.150, 84.36.171, 84.40.020, 84.40.040, 84.40.060, 84.40.130, 84.40.190, 84.40.340; the enactment of RCW 28.45.105, 28.45.120, 82.04.432, 82.50.185, 82.50.250, 82.50.260, 82.98.035, 84.36.176, 84.36.260, 84.40.185, 84.40.335; and the repeal of RCW 82.04.295, 82.04.296, 82.16.025, 82.16.026, 84.40.050, 84.40.140, 84.40.180 and 84.40.260.

82.98.040 Repeals and saving. See 1961 c 15 § 82.98.040.

82.98.050 Emergency—1961 c 15. This act is necessary for the immediate preservation of the public

peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 15 § 82.98.050.]

Title 83

ESTATE TAXATION

Chapters

83.100 Estate and transfer tax reform act.

83.110 Uniform estate tax apportionment act.

Probate and trust law: Title 11 RCW.

Tax returns, remittances, etc., filing and receipt: RCW 1.12.070.

Chapter 83.100

ESTATE AND TRANSFER TAX REFORM ACT

Sections

83.100.010	Short title.
83.100.020	Definitions.
83.100.030	Residents—Tax imposed—Credit for tax paid other state.
83.100.040	Nonresidents—Tax imposed—Exemption.
83.100.050	Tax reports—Date to be filed—Extensions.
83.100.060	Date payment due—Date deemed received.
83.100.070	Interest on amount due—Extension of time to file federal return.
83.100.080	Department to issue release—Final settlement of account.
83.100.090	Amended returns—Final determination.
83.100.100	Administration—Rules.
83.100.110	Sale of property to pay tax—Creation of lien.
83.100.120	Liability for failure to pay tax before distribution or delivery.
83.100.130	Refund for overpayment.
83.100.140	Criminal acts relating to estate tax returns.
83.100.150	Administration by department—Action for collection of tax—Appeal.
83.100.900	Repeals and saving.
83.100.901	Section captions not part of law.
83.100.902	New chapter.
83.100.903	Effective date—1981 2nd ex.s. c 7.

83.100.010 Short title. This chapter may be cited as the "Estate and Transfer Tax Reform Act of 1981." [1981 2nd ex.s. c 7 § 83.100.010 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.020 Definitions. As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal credit" means the maximum amount of the credit for estate death taxes allowed by section 2011 for the decedent's net estate;
- (4) "Gross estate" means "gross estate" as defined and used in section 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered;
- (5) "Net estate" means "taxable estate" as defined in section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered;
- (6) "Nonresident" means a decedent who was domiciled outside Washington at his death;

(7) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(8) "Personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified, and acting, any person who has possession of any property;

(9) "Property" means property included in the gross estate;

(10) "Release" means a release of no tax due or a receipt for payment of the tax due under this chapter;

(11) "Resident" means a decedent who was domiciled in Washington at time of death;

(12) "Section 2011" means section 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered; and

(13) "Transfer" means "transfer" as defined and used in section 2001 of the United States Internal Revenue Code of 1954, as amended or renumbered. [1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.030 Residents—Tax imposed—Credit for tax paid other state. (1) A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.

(2) If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by section 2011, and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(a) The amount of the death tax paid the other state and credited against the federal estate tax; or

(b) An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state, and the denominator of which is the value of the decedent's gross estate. [1981 2nd ex.s. c 7 § 83.100.030 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.040 Nonresidents—Tax imposed—Exemption. (1) Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in Washington of every nonresident.

(2) The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Washington, and the

denominator of which is the value of the decedent's gross estate.

(3) The transfer of the property of a nonresident is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled. [1981 2nd ex.s. c 7 § 83.100.040 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.050 Tax reports—Date to be filed—Extensions. (1) The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:

- (a) A report for the taxes due under this chapter; and
- (b) A true copy of the federal estate tax return.

(2) If the personal representative has obtained an extension of time for filing the federal return, the filing required by subsection (1) of this section shall be similarly extended until the end of the time period granted in the extension of time for the federal return. A true copy of the extension shall be filed with the department within thirty days of issuance.

(3) No Washington report need be filed if the estate is not subject to the tax imposed by this chapter. [1986 c 44 § 1; 1981 2nd ex.s. c 7 § 83.100.050 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.060 Date payment due—Date deemed received. (1) The taxes imposed by this chapter shall be paid by the personal representative to the department on or before the date the return for the taxes is required to be filed under RCW 83.100.050.

(2) For the purposes of this chapter, a return or payment delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which the payment or the request for release of nonliability is mailed, if the postmark date is within the time allowed for filing the return or making the payment, including any extensions. [1981 2nd ex.s. c 7 § 83.100.060 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.070 Interest on amount due—Extension of time to file federal return. (1) Any tax due under this chapter which is not paid by the time prescribed for the filing of the report as provided in RCW 83.100.050, not including any extensions in respect to the filing of the report or the payment of the tax, shall bear interest at the rate of twelve percent per annum from the date any tax is due until paid.

(2) If the report provided for in RCW 83.100.050 is not filed within the time periods specified, then the personal representative shall pay, in addition to the interest provided in this section, a penalty equal to five percent of the tax due in respect to the transfer for each month

beyond the time periods that the report has not been filed, but no penalty so imposed may exceed a total of twenty-five percent of the tax.

(3) If the personal representative has obtained an extension of time for payment of the federal tax, the personal representative may elect to extend the time for payment of the tax due under this chapter in accordance with the extension. The election shall be made by filing a true copy of the extension of time for payment with the report and the returns required under RCW 83.100-.050. [1981 2nd ex.s. c 7 § 83.100.070 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.080 Department to issue release—Final settlement of account. (1) The department shall issue an automatic release to the personal representative when the taxes due under this chapter have been paid as prescribed in RCW 83.100.050, and the request for a release includes the sworn statement of the personal representative that in fact all taxes due have been paid.

(2) The obtaining of this release shall give to the personal representative sufficient authority to effectuate the transfer of all property composing the decedent's estate. [1986 c 44 § 2; 1981 2nd ex.s. c 7 § 83.100.080 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.090 Amended returns—Final determination. (1) If the personal representative files an amended federal return, the personal representative shall immediately file with the department an amended Washington report with a true copy of the amended federal return. If the personal representative is required to pay an additional tax under this chapter pursuant to the amended return, the personal representative shall pay the additional tax, together with interest as provided in RCW 83.100.070, at the same time the personal representative files the amended return, subject, however, to any extension election under RCW 83.100.070.

(2) Upon final determination of the federal tax due with respect to any transfer, the personal representative shall, within sixty days after the determination, give written notice of it to the department in such form as may be prescribed by rule. If any additional tax is due under this chapter by reason of the determination, the personal representative shall pay the same, together with interest as provided in RCW 83.100.070, at the same time he files the notice, subject, however, to any extension election under RCW 83.100.070. [1981 2nd ex.s. c 7 § 83.100.090 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.100 Administration—Rules. The department shall adopt such rules as may be necessary to carry into effect the provisions of this chapter, including rules relating to the return for taxes due under this chapter. The rules shall have the same force and effect as if specifically set forth in this chapter, unless declared invalid by a judgment of a court of record not appealed from. [1981 2nd ex.s. c 7 § 83.100.100 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.110 Sale of property to pay tax—Creation of lien. (1) A personal representative may sell so much of any property as is necessary to pay the taxes due under this chapter. A personal representative may sell so much of any property specifically bequeathed or devised as is necessary to pay the proportionate amount of the taxes due on the transfer of the property and the fees and expenses of the sale, unless the legatee or devisee pays the personal representative the proportionate amount of the taxes due.

(2) Unless any tax due is sooner paid in full, it shall be a lien upon the gross estate of the decedent for a period of ten years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of the lien. Liens created under this subsection shall be qualified as follows:

(a) The limitation period, as described in this subsection, shall in each case be extended for a period of time equal to the period of pendency of litigation of questions affecting the determination of the amount of tax due, provided a lis pendens has been filed with the auditor of the county in which the property is located;

(b) Any part of the gross estate which is transferred to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds arising out of the transfer; and

(c) A mortgage on property pursuant to an order of court for payment of charges against the estate and expenses of administration shall constitute a lien upon the property prior and superior to the tax lien, which tax lien shall attach to the proceeds. [1981 2nd ex.s. c 7 § 83.100.110 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.120 Liability for failure to pay tax before distribution or delivery. (1) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(2) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Washington without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is liable for the taxes due under this chapter to the extent of the value of the property delivered. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Washington by such a person.

(3) For the purposes of this section, persons who do not have possession of a decedent's property include anyone not responsible primarily for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(4) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release certificate or the release of nonliability certificate, furnished by the department to the personal representative, as evidence of compliance with the requirements of this chapter, and make such deliveries and transfers as the personal representative may direct without being liable for any taxes due under this chapter. [1981 2nd ex.s. c 7 § 83.100.120 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.130 Refund for overpayment. Whenever it is determined that a personal representative has overpaid the tax due under this chapter, the department may refund the amount of the overpayment, together with interest at the then existing statutory rate of interest. No claim for refund may be initiated more than one year after the date the federal tax has been first paid. [1981 2nd ex.s. c 7 § 83.100.130 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.140 Criminal acts relating to estate tax returns. Any person who wilfully fails to file a Washington estate tax return when required by this chapter or who wilfully files a false return commits a gross misdemeanor as defined in chapter [Title] 9A RCW and shall be punished as provided in Title 9A RCW for the perpetration of a gross misdemeanor. [1981 2nd ex.s. c 7 § 83.100.140 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.150 Administration by department—Action for collection of tax—Appeal. (1) The department may collect the tax provided for in this chapter, including applicable interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of this tax and any interest and penalties on the tax. The superior court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Washington shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter. If no probate or administration proceedings have been taken out in any court of this state, the superior court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a non-domiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which

is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other.

(2) Nothing in this chapter denies the right of appellate review as provided by law and the Washington appellate rules. [1981 2nd ex.s. c 7 § 83.100.150 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.900 Repeals and saving. (1) The following chapters and their session law bases are each repealed: Chapters 83.01, 83.04, 83.05, 83.08, 83.12, 83.14, 83.16, 83.20, 83.24, 83.28, 83.32, 83.36, 83.40, 83.44, 83.48, 83.52, 83.58, 83.60, and 83.98 RCW.

(2) These repeals shall not be construed as affecting any existing right acquired under the statutes repealed or under any rule, regulation, or order adopted pursuant thereto; nor as affecting any proceeding instituted thereunder. [1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.901 Section captions not part of law. As used in this act, section captions constitute no part of the law. [1981 2nd ex.s. c 7 § 83.100.170 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.902 New chapter. Sections 83.100.010 through 83.100.150 of this act shall constitute a new chapter in Title 83 RCW to be designated chapter 83.100 RCW. [1981 2nd ex.s. c 7 § 83.100.180 (Initiative Measure No. 402, approved November 3, 1981).]

83.100.903 Effective date—1981 2nd ex.s. c 7. This act shall take effect January 1, 1982. [1981 2nd ex.s. c 7 § 83.100.190 (Initiative Measure No. 402, approved November 3, 1981).]

Chapter 83.110

UNIFORM ESTATE TAX APPORTIONMENT ACT

Sections

83.110.010	Definitions.
83.110.020	Apportionment of tax.
83.110.030	Apportionment procedure.
83.110.040	Collection of tax from persons interested in the estate—Security.
83.110.050	Allowance for exemptions, deductions, and credits.
83.110.060	Apportionment between temporary and remainder interests prohibited.
83.110.070	Time for recovery of tax from persons interested in the estate—Exoneration of fiduciary—Recovery of uncollectible taxes.
83.110.080	Action by nonresident—Reciprocity.
83.110.090	Coordination with federal law.
83.110.900	Construction.
83.110.901	Short title.
83.110.902	Captions.
83.110.903	Application.
83.110.904	Severability—1986 c 63.

83.110.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "Fiduciary" means executor, administrator of any description, and trustee;

(3) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(4) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(6) "Tax" means the federal estate tax and the estate tax payable to this state and interest and penalties imposed in addition to the tax. [1986 c 63 § 1.]

83.110.020 Apportionment of tax. Except as provided in RCW 83.110.090 and unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. [1986 c 63 § 2.]

83.110.030 Apportionment procedure. (1) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in RCW 83.110.020 and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in RCW 83.110.020, it may direct apportionment thereof equitably.

(4) If the court finds that the assessment of penalties and interest is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax

apportioned to the person in accordance with this chapter, the determination of the court in respect thereto is prima facie correct. [1986 c 63 § 3.]

83.110.040 Collection of tax from persons interested in the estate—Security. (1) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his or her possession, distributable to any person interested in the estate, the amount of tax attributable to his or her interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.

(2) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the court having jurisdiction of the administration of the estate. [1986 c 63 § 4.]

83.110.050 Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an

inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result under section 2053(d) of the Internal Revenue Code of 1954 of the United States relates to deduction for state death taxes on transfers for public, charitable, or religious uses. [1986 c 63 § 5.]

83.110.060 Apportionment between temporary and remainder interests prohibited. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder. [1986 c 63 § 6.]

83.110.070 Time for recovery of tax from persons interested in the estate—Exoneration of fiduciary—Recovery of uncollectible taxes. Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment. [1986 c 63 § 7.]

83.110.080 Action by nonresident—Reciprocity. Subject to this section a fiduciary acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy. [1986 c 63 § 8.]

83.110.090 Coordination with federal law. If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed in this chapter. Nothing in this chapter affects the right of a personal representative to recover payments due an estate pursuant to the provisions of section 2207A of the Internal Revenue Code of 1954. [1986 c 63 § 9.]

83.110.900 Construction. This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [1986 c 63 § 10.]

83.110.901 Short title. This chapter may be cited as the uniform estate tax apportionment act. [1986 c 63 § 11.]

83.110.902 Captions. As used in this chapter, section captions constitute no part of the law. [1986 c 63 § 13.]

83.110.903 Application. This chapter does not apply to taxes due on account of the death of decedents dying prior to January 1, 1987. [1986 c 63 § 14.]

83.110.904 Severability—1986 c 63. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 63 § 12.]

Title 84

PROPERTY TAXES

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- 84.08** General powers and duties of department of revenue.
- 84.09** General provisions.
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Additional provisions relating to taxes, see titles pertaining to particular taxing authorities, i.e., cities, counties, school districts, etc.

Building permits, new construction: Chapter 36.21 RCW.

Burying place exempt from execution: RCW 68.24.220.

Cemetery associations, nonprofit: RCW 68.20.110, 68.20.120.

Cities, unfit buildings: Chapter 35.80 RCW.

Cities and towns, prepayment by taxpayer of taxes and assessments owed to: RCW 35.21.650.

Columbia Basin project: RCW 89.12.120.

Constitutional limitations generally: State Constitution Art. 2 § 40, Art. 7, Art. 11, §§ 9, 12.

Counties, prepayment and deposit of taxes and assessments: RCW 36.32.120.

Federal agencies and instrumentalities, taxation: State Constitution Art. 7 §§ 1, 3; Title 37 RCW.

Flood control district property: RCW 86.09.520.

Industrial loan companies, taxation: RCW 31.04.260.

Irrigation district property: RCW 87.03.260.

Lease of tax acquired property for underground storage of natural gas: RCW 80.40.070.

Limitation on levies: State Constitution Art. 7 § 2.

Local improvement trust property: RCW 35.53.010.

Log patrol activities, duties of department of revenue: Chapter 76.40 RCW.

Olympic National Park: RCW 37.08.210.

Personal exemption not applicable to tax levied on such property: RCW 6.15.010.

Qualifications for persons assessing real property—Examination: RCW 36.21.015.

Rainier National Park: RCW 37.08.200.

Real estate, excise tax on transfer: Chapters 82.45 and 82.46 RCW.

Savings and loan associations: RCW 33.28.040.

Tax advisory council: Chapter 43.38 RCW.

Tax returns, remittances, etc., filing and receipt: RCW 1.12.070.

Taxing districts, general indebtedness limitation: Chapter 39.36 RCW.

Termination of tax preferences: Chapter 43.136 RCW.

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Urban renewal: Chapter 35.81 RCW.

Chapter 84.04

DEFINITIONS

Sections

- 84.04.010 Introductory.
- 84.04.020 "Assessed valuation of taxable property", and allied terms.
- 84.04.030 "Assessed value of property".
- 84.04.040 "Assessment year", "fiscal year".
- 84.04.043 "Board of equalization".
- 84.04.045 "County auditor".
- 84.04.047 "Department".
- 84.04.050 "Householder".
- 84.04.060 "Money", "moneys".
- 84.04.065 Number and gender.
- 84.04.070 "Oath", "swear".
- 84.04.075 "Person".
- 84.04.080 "Personal property".
- 84.04.090 "Real property".
- 84.04.095 Classification of components of irrigation systems.
- 84.04.100 "Tax" and derivatives.
- 84.04.120 "Taxing district".
- 84.04.130 "Tract", "lot", etc.
- 84.04.140 "Regular property taxes", "regular property tax levies".

84.04.010 Introductory. Unless otherwise expressly provided or unless the context indicates otherwise, terms used in this title shall have the meaning given to them in this chapter. [1961 c 15 § 84.04.010.]

84.04.020 "Assessed valuation of taxable property", and allied terms. The terms "assessed valuation of taxable property", "valuation of taxable property", "value of taxable property", "taxable value of property", "property assessed" and "value" whenever used in any statute, law, charter or ordinance with relation to the levy of taxes in any taxing district, shall be held and

construed to mean "assessed value of property" as defined in RCW 84.04.030. [1961 c 15 § 84.04.020. Prior: 1919 c 142 § 2; RRS § 11227.]

84.04.030 "Assessed value of property". "Assessed value of property" shall be held and construed to mean the aggregate valuation of the property subject to taxation by any taxing district as placed on the last completed and balanced tax rolls of the county preceding the date of any tax levy. [1961 c 15 § 84.04.030. Prior: (i) 1925 ex.s. c 130 § 3; RRS § 11107. (ii) 1919 c 142 § 1, part; RRS § 11226, part.]

84.04.040 "Assessment year", "fiscal year". The assessment year contemplated in this title and the fiscal year contemplated in this title shall commence on January 1st and end on December 31st in each year. [1961 c 15 § 84.04.040. Prior: 1939 c 206 § 39; 1925 ex.s. c 130 § 81; 1897 c 71 § 66; 1893 c 124 § 67; 1890 p 560 § 82; RRS § 11242.]

84.04.043 "Board of equalization". The state "board of equalization" means the department of revenue of the state of Washington. [1979 c 107 § 26.]

84.04.045 "County auditor". "County auditor" shall be construed to mean registrar or recorder, whenever it shall be necessary to use the same to the proper construction of this title. [1961 c 15 § 84.04.045. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.047 "Department". "Department" means the department of revenue of the state of Washington. [1979 c 107 § 25.]

84.04.050 "Householder". "Householder" shall be taken to mean and include every person, married or single, who resides within the state of Washington being the owner or holder of an estate or having a house or place of abode, either as owner or lessee. [1961 c 15 § 84.04.050. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.060 "Money", "moneys". "Money" or "moneys" shall be held to mean gold and silver coin, gold and silver certificates, treasury notes, United States notes, and bank notes. [1961 c 15 § 84.04.060. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.065 Number and gender. Every word importing the singular number only may be extended to or embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the masculine gender only may be extended and applied to females as well as males. [1961 c 15 § 84.04.065. Prior: 1925 ex.s. c

130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.070 "Oath", "swear". "Oath" may be held to mean affirmation, and the word "swear" may be held to mean affirm. [1961 c 15 § 84.04.070. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.075 "Person". "Person" shall be construed to include firm, company, association or corporation. [1961 c 15 § 84.04.075. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.080 "Personal property". "Personal property" for the purposes of taxation, shall be held and construed to embrace and include, without especially defining and enumerating it, all goods, chattels, stocks, estates or moneys; all standing timber held or owned separately from the ownership of the land on which it may stand; all fish trap, pound net, reef net, set net and drag seine fishing locations; all leases of real property and leasehold interests therein for a term less than the life of the holder; all improvements upon lands the fee of which is still vested in the United States, or in the state of Washington; all gas and water mains and pipes laid in roads, streets or alleys; and all property of whatsoever kind, name, nature and description, which the law may define or the courts interpret, declare and hold to be personal property for the purpose of taxation and as being subject to the laws and under the jurisdiction of the courts of this state, whether the same be any marine craft, as ships and vessels, or other property holden under the laws and jurisdiction of the courts of this state, be the same at home or abroad: *Provided*, That mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county, municipal and taxing district bonds and warrants shall not be considered as property for the purpose of this title, and no deduction shall hereafter be made or allowed on account of any indebtedness owed. [1961 c 15 § 84.04.080. Prior: 1925 ex.s. c 130 § 5, part; 1907 c 108 §§ 1, 2; 1907 c 48 § 1, part; 1901 ex.s. c 2 § 1, part; 1897 c 71 § 3, part; 1895 c 176 § 1, part; 1893 c 124 § 3, part; 1891 c 140 § 3, part; 1890 p 530 § 3, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; 1871 p 37 § 1, part; 1869 p 176 § 3, part; 1854 p 332 § 4, part; RRS § 11109, part.]

Fox, mink, marten declared personalty: RCW 16.72.030.

84.04.090 "Real property". The term "real property" for the purposes of taxation shall be held and construed to mean and include the land itself, whether laid out in town lots or otherwise, and all buildings, structures or improvements or other fixtures of whatsoever kind thereon, except improvements upon lands the fee of which is still vested in the United States, or in the state

of Washington, and all rights and privileges thereto belonging or in any wise appertaining, except leases of real property and leasehold interests therein for a term less than the life of the holder; and all substances in and under the same; all standing timber growing thereon, except standing timber owned separately from the ownership of the land upon which the same may stand or be growing; and all property which the law defines or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law for the purposes of taxation. The term real property shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location upon land owned or leased by the owner of the mobile home and placed on a permanent foundation (posts or blocks) with fixed pipe connections with sewer, water, or other utilities: *Provided*, That a mobile home located on land leased by the owner of the mobile home shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040. [1987 c 155 § 1; 1985 c 395 § 2; 1971 ex.s. c 299 § 70; 1961 c 15 § 84.04.090. Prior: 1925 ex.s. c 130 § 4; 1897 c 71 § 2; 1893 c 124 § 2; 1891 c 140 § 2; 1890 p 530 § 2; 1886 p 48 § 2, part; Code 1881 § 2830, part; 1871 p 37 § 2; 1869 p 176 § 2; RRS § 11108.]

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

84.04.095 Classification of components of irrigation systems. Notwithstanding RCW 84.04.080 and 84.04.090, the department shall classify, by rule, the components of irrigation systems as real or personal property for purposes of taxation under this title. [1987 c 319 § 8.]

84.04.100 "Tax" and derivatives. The word "tax" and its derivatives, "taxes," "taxing," "taxed," "taxation" and so forth shall be held and construed to mean the imposing of burdens upon property in proportion to the value thereof, for the purpose of raising revenue for public purposes. [1961 c 15 § 84.04.100. Prior: 1925 ex.s. c 130 § 1; 1897 c 71 § 1; 1893 c 124 § 1; RRS § 11105.]

84.04.120 "Taxing district". "Taxing district" shall be held and construed to mean and include the state and any county, city, town, township, port district, school district, road district, metropolitan park district, water district or other municipal corporation, now or hereafter existing, having the power or authorized by law to impose burdens upon property within the district in proportion to the value thereof, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed, for such purposes, upon property in proportion to the benefits accruing thereto. [1961 c 15 § 84.04.120. Prior: (i) 1919 c 142 § 1, part; RRS § 11226, part. (ii) 1925 ex.s. c 130 § 2; RRS § 11106.]

(1987 Ed.)

84.04.130 "Tract", "lot", etc. "Tract" or "lot," and "piece or parcel of real property," and "piece or parcel of lands" shall each be held to mean any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person or company. [1961 c 15 § 84.04.130. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.140 "Regular property taxes", "regular property tax levies". (Effective unless proposed constitutional amendments are approved by the voters at the November 1987, general election.) The term "regular property taxes" and the term "regular property tax levy" shall mean a property tax levy by or for a taxing district which levy is subject to the aggregate limitation set forth in RCW 84.52.043 and RCW 84.52.050, as now or hereafter amended, or which is imposed by or for a port district or a public utility district. [1973 1st ex.s. c 195 § 88; 1971 ex.s. c 288 § 13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.04.140 "Regular property taxes", "regular property tax levies". (Effective December 10, 1987, if the proposed constitutional amendments are approved by the voters at the November 1987, general election.) The term "regular property taxes" and the term "regular property tax levy" shall mean a property tax levy by or for a taxing district which levy is subject to the aggregate limitation set forth in RCW 84.52.043 and RCW 84.52.050, as now or hereafter amended, or which is imposed by or for a port district or a public utility district, or which is imposed under RCW 84.52.064. [1987 c 413 § 9; 1973 1st ex.s. c 195 § 88; 1971 ex.s. c 288 § 13.]

Contingent effective date—Severability—1987 c 413: See notes following RCW 28A.47.060.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Chapter 84.08

GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

Sections	
84.08.005	Adoption of provisions of chapter 82.01 RCW.
84.08.010	Powers of department of revenue—General supervision—Rules and processes—Visitation of counties.
84.08.020	Additional powers—To advise county and local officers—Books and blanks—Reports.
84.08.030	Additional powers—To test work of assessors—Supplemental assessment lists—Audits.
84.08.040	Additional powers—To keep valuation records—Access to files of other public offices.
84.08.050	Additional powers—Access to books and records—Hearings—Investigation of complaints.

- 84.08.060 Additional powers—Power over county boards of equalization—Reconvening—Limitation on increase in property value in appeals to board of tax appeals from county board of equalization.
- 84.08.070 Rules and regulations authorized.
- 84.08.080 Department to decide questions of interpretation.
- 84.08.110 Department to compile tax laws.
- 84.08.120 Duty to obey orders of department of revenue.
- 84.08.130 Appeals from county board of equalization to board of tax appeals.
- 84.08.140 Appeals from levy of taxing district to department of revenue.
- 84.08.190 Assessors to meet with department of revenue.

Constitutional limitations on taxation: State Constitution Art. 2 § 40, Art. 7, Art. 11, §§ 9, 12.

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

Taxing districts, general limitation of indebtedness: Chapter 39.36 RCW.

84.08.005 Adoption of provisions of chapter 82.01 RCW. The provisions of chapter 82.01 RCW, as now or hereafter amended, apply to Title 84 RCW as fully as though they were set forth herein. [1961 c 15 § 84.08.005.]

84.08.010 Powers of department of revenue—General supervision—Rules and processes—Visitation of counties. The department of revenue shall:

(1) Exercise general supervision and control over the administration of the assessment and tax laws of the state, over county assessors, and county boards of equalization, and over boards of county commissioners, county treasurers and county auditors and all other county officers, in the performance of their duties relating to taxation, and perform any act or give any order or direction to any county board of equalization or to any county assessor or to any other county officer as to the valuation of any property, or class or classes of property in any county, township, city or town, or as to any other matter relating to the administration of the assessment and taxation laws of the state, which, in the department's judgment may seem just and necessary, to the end that all taxable property in this state shall be listed upon the assessment rolls and valued and assessed according to the provisions of law, and equalized between persons, firms, companies and corporations, and between the different counties of this state, and between the different taxing units and townships, so that equality of taxation and uniformity of administration shall be secured and all taxes shall be collected according to the provisions of law.

(2) Formulate such rules and processes for the assessment of both real and personal property for purposes of taxation as are best calculated to secure uniform assessment of property of like kind and value in the various taxing units of the state, and relative uniformity between properties of different kinds and values in the same taxing unit. The department of revenue shall furnish to each county assessor a copy of the rules and processes so formulated. The department of revenue may, from time to time, make such changes in the rules and processes so

formulated as it deems advisable to accomplish the purpose thereof, and it shall inform all county assessors of such changes.

(3) Visit the counties in the state, unless prevented by necessary official duties, for the investigation of the methods adopted by the county assessors and county boards of commissioners in the assessment and equalization of taxation of real and personal property; carefully examine into all cases where evasion of property taxation is alleged, and ascertain where existing laws are defective, or improperly or negligently administered. [1975 1st ex.s. c 278 § 147; 1961 c 15 § 84.08.010. Prior: 1939 c 206 §§ 4, part and 5, part; 1935 c 127 § 1, part; 1931 c 15 § 1, part; 1927 c 280 § 5, part; 1925 c 18 § 5, part; 1921 c 7 §§ 50, 53; 1907 c 220 § 1, part; 1905 c 115 § 2, part; RRS §§ 11091 (first), part and 11091 (second), part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.020 Additional powers—To advise county and local officers—Books and blanks—Reports. The department of revenue shall:

(1) Confer with, advise and direct assessors, boards of equalization, county boards of commissioners, county treasurers, county auditors and all other county and township officers as to their duties under the law and statutes of the state, relating to taxation, and direct what proceedings, actions or prosecutions shall be instituted to support the law relating to the penalties, liabilities and punishment of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property, and the collection of taxes, and cause complaint to be made against any of such public officers in the proper county for their removal from office for official misconduct or neglect of duty. In the execution of these powers and duties the said department or any member thereof may call upon prosecuting attorneys or the attorney general, who shall assist in the commencement and prosecution for penalties and forfeiture, liabilities and punishments for violations of the laws of the state in respect to the assessment and taxation of property.

(2) Prescribe all forms of books and blanks to be used in the assessment and collection of taxes, and change such forms when prescribed by law, and recommend to the legislature such changes as may be deemed most economical to the state and counties, and such recommendation shall be accompanied by carefully prepared bill or bills for this end.

(3) Require county, city and town officers to report information as to assessments of property, equalization of taxes, the expenditure of public funds for all purposes, and other information which said department of revenue may request. [1975 1st ex.s. c 278 § 148; 1961 c 15 § 84.08.020. Prior: 1939 c 206 § 5, part; 1935 c 127 § 1, part; 1921 c 7 §§ 50, 53; 1907 c 220 § 1, part; 1905 c 115 § 2, part; RRS § 11091 (second), part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.030 Additional powers—To test work of assessors—Supplemental assessment lists—Audits. The department of revenue shall examine and test the work of county assessors at any time, and have and possess all rights and powers of such assessors for the examination of persons, and property, and for the discovery of property subject to taxation, and if it shall ascertain that any taxable property is omitted from the assessment list, or not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the department of revenue to place such property on the assessment list, or to correct such incorrect assessment or valuation the department of revenue shall have the power to prepare a supplement to such assessment list, which supplement shall include all property required by the department of revenue to be placed on the assessment list and all corrections required to be made. Such supplement shall be filed with the assessor's assessment list and shall thereafter constitute an integral part thereof to the exclusion of all portions of the original assessment list inconsistent therewith, and shall be submitted therewith to the county board of equalization. As part of the examining and testing of the work of county assessors to be accomplished pursuant to this section, the department of revenue shall audit state-wide at least one-half of one percent of all personal property accounts listed each calendar year. [1975-'76 2nd ex.s. c 94 § 1; 1967 ex.s. c 149 § 30; 1961 c 15 § 84.08.030. Prior: 1939 c 206 § 4, part; 1931 c 15 § 1, part; 1927 c 280 § 5, part; 1925 c 18 § 5, part; 1921 c 7 §§ 50, 53; RRS § 11091 (first).]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.08.040 Additional powers—To keep valuation records—Access to files of other public offices. The department of revenue shall secure, tabulate, and keep records of valuations of all classes of property throughout the state, and for that purpose, shall have access to all records and files of state offices and departments and county and municipal offices and shall require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of property of public service corporations for rate making purposes to file reports with the department of revenue, giving such information as to such valuation and the source thereof: *Provided*, That the nature and kind of the tabulations, records of valuation and requirements from public officers, as stated herein, shall be in such form, and cover such valuations, as the department of revenue shall prescribe. [1975 1st ex.s. c 278 § 149; 1961 c 15 § 84.08.040. Prior: 1939 c 206 § 4, part; 1931 c 15 § 1, part; 1927 c 280 § 5, part; 1925 c 18 § 5, part; 1921 c 7 §§ 50, 53; RRS § 11091 (first), part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

(1987 Ed.)

84.08.050 Additional powers—Access to books and records—Hearings—Investigation of complaints. The department of revenue shall:

(1) Require individuals, partnerships, companies, associations and corporations to furnish information as to their capital, funded debts, investments, value of property, earnings, taxes and all other facts called for on these subjects so that the department may determine the taxable value of any property or any other fact it may consider necessary to carry out any duties now or hereafter imposed upon it, or may ascertain the relative burdens borne by all kinds and classes of property within the state, and for these purposes their records, books, accounts, papers and memoranda shall be subject to production and inspection, investigation and examination by said department, or any employee thereof designated by said department for such purpose, and any or all real and/or personal property in this state shall be subject to visitation, investigation, examination and/or listing at any and all times by the department or by any employee thereof designated by said department.

(2) Summon witnesses to appear and testify on the subject of capital, funded debts, investments, value of property, earnings, taxes, and all other facts called for on these subjects, or upon any matter deemed material to the proper assessment of property, or to the investigation of the system of taxation, or the expenditure of public funds for state, county, district and municipal purposes: *Provided, however*, No person shall be required to testify outside of the county in which the taxpayer's residence, office or principal place of business, as the case may be, is located. Such summons shall be served in like manner as a subpoena issued out of the superior court and be served by the sheriff of the proper county, and such service certified by him to said department without compensation therefor. Persons appearing before said department in obedience to a summons shall in the discretion of the department receive the same compensation as witnesses in the superior court.

Any member of the department or any employee thereof designated for that purpose may administer oaths to witnesses.

In case any witness shall fail to obey the summons to appear, or refuse to testify, or shall fail or refuse to comply with any of the provisions of subsections (1) and (2) of this section, such person, for each separate or repeated offense, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than five thousand dollars. Any person who shall testify falsely shall be guilty of and shall be punished for perjury.

(3) Thoroughly investigate all complaints which may be made to it of illegal, unjust or excessive taxation, and shall endeavor to ascertain to what extent and in what manner, if at all, the present system is unequal or oppressive. [1973 c 95 § 8; 1961 c 15 § 84.08.050. Prior: 1939 c 206 § 5, part; 1935 c 127 § 1, part; 1921 c 7 §§ 50, 53; 1907 c 220 § 1, part; 1905 c 115 § 2, part; RRS § 11091 (second), part.]

[Title 84 RCW—p 5]

84.08.060 Additional powers—Power over county boards of equalization—Reconvening—Limitation on increase in property value in appeals to board of tax appeals from county board of equalization. The department of revenue shall have power to direct and to order any county board of equalization to raise or lower the valuation of any taxable property, or to add any property to the assessment list, or to perform or complete any other duty required by statute. The department of revenue may require any such board of equalization to reconvene after its adjournment for the purpose of performing any order or requirement made by the department of revenue and may make such orders as it shall determine to be just and necessary. The department may require any county board of equalization to reconvene at any time for the purpose of performing or completing any duty or taking any action it might lawfully have performed or taken at any of its previous regular July, November or April meetings. If such board of equalization shall fail or refuse forthwith to comply with any such order or requirement of the department of revenue, the department of revenue shall have power to take any other appropriate action, or to make such correction or change in the assessment list, and such corrections and changes shall be a part of the record of the proceedings of the said board of equalization: *Provided*, That in all cases where the department of revenue shall raise the valuation of any property or add property to the assessment list, it shall give notice either for the same time and in the same manner as is now required in like cases of county boards of equalization, or if it shall deem such method of giving notice impracticable it shall give notice by publication thereof in a newspaper of general circulation within the county in which the property affected is situated once each week for two consecutive weeks, and the department of revenue shall not proceed to raise such valuation or add such property to the assessment list until a period of five days shall have elapsed subsequent to the date of the last publication of such notice: *Provided further*, That appeals to the board of tax appeals by any taxpayer or taxing unit concerning any action of the county board of equalization shall not raise the valuation of the property to an amount greater than the larger of either the valuation of the property by the county assessor or the valuation of the property assigned by the county board of equalization. Such notice shall give the legal description of each tract of land involved, or a general description in case of personal property; the tax record-owner thereof; the assessed value thereof determined by the county board of equalization in case the property is on the assessment roll; and the assessed value thereof as determined by the department of revenue and shall state that the department of revenue proposes to increase the assessed valuation of such property to the amount stated and to add such property to the assessment list at the assessed valuation stated. The necessary expense incurred by the department of revenue in making such reassessment and/or adding such property to the assessment list shall be borne by the county or township in which the property as reassessed and/or so added to the assessment list is situated and

shall be paid out of the proper funds of such county upon the order of the department of revenue. [1982 1st ex.s. c 46 § 11; 1975 1st ex.s. c 278 § 150; 1961 c 15 § 84.08.060. Prior: 1939 c 206 § 4, part; 1931 c 15 § 1, part; 1927 c 280 § 5, part; 1925 c 18 § 5, part; 1921 c 7 §§ 50, 53; RRS § 11091 (first), part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.070 Rules and regulations authorized. The department of revenue shall make such rules and regulations as may be necessary to carry out the powers granted by this chapter, and for conducting hearings and other proceedings before it. [1975 1st ex.s. c 278 § 151; 1961 c 15 § 84.08.070. Prior: 1939 c 206 § 4, part; 1931 c 15 § 1, part; 1927 c 280 § 5, part; 1925 c 18 § 5, part; 1921 c 7 §§ 50, 53; RRS § 11091 (first), part. FORMER PART OF SECTION: 1935 c 123 § 18 now codified as RCW 84.12.390.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.080 Department to decide questions of interpretation. The department of revenue shall, with the advice of the attorney general, decide all questions that may arise in reference to the true construction or interpretation of this title, or any part thereof, with reference to the powers and duties of taxing district officers, and such decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction. [1975 1st ex.s. c 278 § 152; 1961 c 15 § 84.08.080. Prior: 1925 ex.s. c 130 § 111; 1897 c 71 § 92; 1895 c 176 § 20; 1893 c 124 § 95; RRS § 11272.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.110 Department to compile tax laws. The department of revenue shall compile the laws of this state relating to assessment and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same as it may deem proper. It shall cause the same to be printed and distributed to the several county assessors, deputy county assessors, prosecuting attorneys, county commissioners, in the state, and to such other officers and persons as may request the same. [1975 1st ex.s. c 278 § 154; 1961 c 15 § 84.08.110. Prior: 1907 c 220 § 3; RRS § 11096.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.120 Duty to obey orders of department of revenue. It shall be the duty of every public officer to comply with any lawful order, rule or regulation of the department of revenue made under the provisions of this title, and whenever it shall appear to the department of revenue that any public officer or employee whose duties relate to the assessment or equalization of assessments of property for taxation or to the levy or collection of taxes has failed to comply with the provisions of this title or with any other law relating to such duties or the rules of

the department made in pursuance thereof, the department after a hearing on the facts may issue its order directing such public officer or employee to comply with such provisions of law or of its rules, and if such public officer or employee for a period of ten days after service on him of the department's order shall neglect or refuse to comply therewith, the department of revenue may apply to a judge of the superior court or court commissioner of the county in which said public officer or employee holds office for an order returnable within five days from the date thereof to compel such public officer or employee to comply with such provisions of law or of the department's order, or to show cause why he should not be compelled so to do, and any order issued by the judge pursuant thereto shall be final. The remedy herein provided shall be cumulative and shall not exclude the department of revenue from exercising any power or rights otherwise granted. [1975 1st ex.s. c 278 § 155; 1961 c 15 § 84.08.120. Prior: 1939 c 206 § 7; 1927 c 280 § 12; 1925 c 18 § 12; RRS § 11102.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.130 Appeals from county board of equalization to board of tax appeals. Any taxpayer or taxing unit feeling aggrieved by the action of any county board of equalization may appeal to the board of tax appeals by filing with the county auditor a notice of appeal in duplicate within thirty days after the action of such board of equalization, which notice shall specify the actions complained of, and said auditor shall forthwith transmit one of said notices to the board of tax appeals; and in like manner any county assessor may appeal to the board of tax appeals from any action of any county board of equalization. The board of tax appeals shall require the board appealed from to certify the minutes of its proceedings resulting in such action and all evidence taken in connection therewith, and may receive further evidence, and shall make such order as in its judgment is just and proper. [1977 ex.s. c 290 § 1; 1975 1st ex.s. c 278 § 156; 1961 c 15 § 84.08.130. Prior: 1939 c 206 § 6; 1927 c 280 § 6; 1925 c 18 § 6; RRS § 11092.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Limitation on increase in property value in appeals to board of tax appeals from county board of equalization: RCW 84.08.060.

84.08.140 Appeals from levy of taxing district to department of revenue. Any taxpayer feeling aggrieved by the levy or levies of any taxing district except levies authorized by a vote of the people of the district may appeal therefrom to the department of revenue as hereinafter provided. Such taxpayer, upon the execution of a bond, with two or more sufficient sureties to be approved by the county auditor, payable to the state of Washington, in the penal sum of two hundred dollars and conditioned that if the petitioner shall fail in his appeal for a reduction of said levy or levies he will pay the taxable costs of the hearings hereinafter provided, not exceeding the amount of such bond, may file a written complaint with the county auditor wherein such taxing

district is located not later than ten days after the making and entering of such levy or levies, setting forth in such form and detail as the department of revenue shall by general rule prescribe, his objections to such levy or levies. Upon the filing of such complaint, the county auditor shall immediately transmit a certified copy thereof, together with a copy of the budget or estimates of such taxing district as finally adopted, including estimated revenues and such other information as the department of revenue shall by rule require, to the department of revenue. The department of revenue shall fix a date for a hearing on said complaint at the earliest convenient time after receipt of said record, which hearing shall be held in the county in which said taxing district is located, and notice of such hearing shall be given to the officials of such taxing district, charged with determining the amount of its levies, and to the taxpayer on said complaint by registered mail at least five days prior to the date of said hearing. At such hearings all interested parties may be heard and the department of revenue shall receive all competent evidence. After such hearing, the department of revenue shall either affirm or decrease the levy or levies complained of, in accordance with the evidence, and shall thereupon certify its action with respect thereto to the county auditor, who, in turn, shall certify it to the taxing district or districts affected, and the action of the department of revenue with respect to such levy or levies shall be final and conclusive. [1975 1st ex.s. c 278 § 157; 1961 c 15 § 84.08.140. Prior: 1927 c 280 § 8; 1925 c 18 § 8; RRS § 11098.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.08.190 Assessors to meet with department of revenue. For the purpose of instruction on the subject of taxation, the county assessors of the state shall meet with the department of revenue at the capital of the state, or at such place within the state as they may determine at their previous meeting, on the second Monday of October of each year or on such other date as may be fixed by the department of revenue. Each assessor shall be paid by the county of his residence his actual expenses in attending such meeting, upon presentation to the county auditor of proper vouchers. [1975 1st ex.s. c 278 § 158; 1961 c 15 § 84.08.190. Prior: 1939 c 206 § 16, part; 1925 ex.s. c 130 § 57, part; 1911 c 12 § 1; RRS § 11140, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.09

GENERAL PROVISIONS

Sections

84.09.010	Nomenclature—Taxes designated as taxes of year in which payable.
84.09.020	Abbreviations authorized.
84.09.030	Establishment of taxing district boundaries—Time limitation—Filing (as amended by 1987 c 82).
84.09.030	Establishment of taxing district boundaries—Time limitation—Filing (as amended by 1987 c 358).

- 84.09.035 Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district—Date effective.
- 84.09.037 School district boundary changes.
- 84.09.040 Penalty for nonperformance of duty by county officers.
- 84.09.050 Fees and costs allowed in civil actions against county officers.
- 84.09.070 Authority of operating agencies to levy taxes.
- 84.09.080 List of excess inventory value—Distributions to taxing districts.

84.09.010 Nomenclature—Taxes designated as taxes of year in which payable. All annual taxes and assessments of real and personal property shall hereafter be known and designated as taxes and assessments of the year in which such taxes and assessments, or the initial installment thereof, shall become due and payable. [1961 c 15 § 84.09.010. Prior: 1939 c 136 § 2; RRS § 11112–2. Formerly RCW 84.08.150.]

84.09.020 Abbreviations authorized. In all proceedings relative to the levy, assessment or collection of taxes, and any entries required to be made by any officer or by the clerk of the court, letters, figures and characters may be used to denote townships, ranges, sections, parts of sections, lots or blocks, or parts thereof, the year or years for which taxes were due, and the amount of taxes, assessments, penalties, interest and costs. Whenever the abbreviation "do." or the character "" or any other similar abbreviations or characters shall be used in any such proceedings, they shall be construed and held as meaning and being the same name, word, initial, letters, abbreviations, figure or figures, as the last one preceding such "do." and "" or other similar characters. [1961 c 15 § 84.09.020. Prior: 1925 ex.s. c 130 § 112, part; 1897 c 71 § 93, part; 1893 c 124 § 97, part; RRS § 11273, part. Formerly RCW 84.08.170.]

84.09.030 Establishment of taxing district boundaries—Time limitation—Filing (as amended by 1987 c 82). For the purposes of property taxation and the levy of property taxes the boundaries of counties, cities and all other taxing districts shall be the established official boundaries of such districts existing on the first day of March of the year in which the levy is made, and no such levy shall be made for any taxing district whose boundaries were not duly established on the first day of March of such year: *Provided*, That ~~((for the year 1984 only the boundaries of library districts shall be the established official boundaries existing on the first day of October: *Provided further*, That for the year 1984 only, boundaries of public hospital districts shall be the established official boundaries existing on the first day of April))~~ boundaries for port districts newly formed by election, with boundaries coterminous with other taxing district boundaries established prior to the first day of March, shall be the established official boundaries existing on the first day of October following formation. In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in such boundaries, is required by law to be filed in the office of the county auditor or other county official, said instrument shall be filed in triplicate. The officer with whom such instrument is filed shall transmit two copies to the county assessor. [1987 c 82 § 1; 1984 c 203 § 9; 1981 c 26 § 4; 1961 c 15 § 84.09.030. Prior: 1951 c 116 § 1; 1949 c 65 § 1; 1943 c 182 § 1; 1939 c 136 § 1; Rem. Supp. 1949 § 11106–1. Formerly RCW 84.08.160.]

84.09.030 Establishment of taxing district boundaries—Time limitation—Filing (as amended by 1987 c 358). For the purposes of property taxation and the levy of property taxes the boundaries of counties, cities and all other taxing districts shall be the established official boundaries of such districts existing on the first day of March of the year in which the levy is made, and no such levy shall be made

for any taxing district whose boundaries were not duly established on the first day of March of such year (~~*Provided*, That for the year 1984 only the boundaries of library districts shall be the established official boundaries existing on the first day of October: *Provided further*, That for the year 1984 only, boundaries of public hospital districts shall be the established official boundaries existing on the first day of April~~). However, the boundaries of a taxing district shall be established on the first day of June of the year in which the property tax levy is made whenever the taxing district has incorporated that year and has boundaries coterminous with the boundaries of another taxing district, as they existed on the first day of March of that year, or the boundaries of a taxing district have been altered that year by removing or adding territory with boundaries coterminous with the boundaries of another taxing district to the taxing district as they existed on the first day of March of that year. In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in such boundaries, is required by law to be filed in the office of the county auditor or other county official, said instrument shall be filed in triplicate. The officer with whom such instrument is filed shall transmit two copies to the county assessor. [1987 c 358 § 1; 1984 c 203 § 9; 1981 c 26 § 4; 1961 c 15 § 84.09.030. Prior: 1951 c 116 § 1; 1949 c 65 § 1; 1943 c 182 § 1; 1939 c 136 § 1; Rem. Supp. 1949 § 11106–1. Formerly RCW 84.08.160.]

Reviser's note: RCW 84.09.030 was amended twice during the 1987 legislative session, each without reference to the other.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—1984 c 203: See note following RCW 35.43.140.

84.09.035 Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district—Date effective. Notwithstanding the provisions of RCW 84.09.030, the boundaries of a library district, metropolitan park district, fire protection district, or public hospital district that withdraws an area from its boundaries pursuant to RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, which area has boundaries that are coterminous with the boundaries of a taxing district, shall be established as of the first day of October in the year in which the area is withdrawn. [1987 c 138 § 5.]

84.09.037 School district boundary changes. Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.57 RCW shall retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer, for such tax collection years and for such excess tax levies as the state board of education may approve and order that the transferred territory shall either be subject to or relieved of such excess levies, as the case may be. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts shall be modified to recognize the transfer of territory subject to RCW 84.09.030. [1987 c 100 § 3.]

84.09.040 Penalty for nonperformance of duty by county officers. Every county auditor, county assessor and county treasurer who in any case refuses or knowingly neglects to perform any duty enjoined on him by this title, or who consents to or connives at any evasion of its provisions whereby any proceeding herein provided

for is prevented or hindered, or whereby any property required to be listed for taxation is unlawfully exempted, or the valuation thereof is entered on the tax roll at less than its true taxable value, shall, for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of competent jurisdiction upon the complaint of any citizen who is a taxpayer; and the prosecuting attorney shall prosecute such suit to judgment and execution. [1961 c 15 § 84.09.040. Prior: 1925 ex.s. c 130 § 109; 1897 c 71 § 89; 1893 c 124 § 92; RRS § 11270. Formerly RCW 84.56.410.]

84.09.050 Fees and costs allowed in civil actions against county officers. Whenever a civil action is commenced against any person holding the office of county treasurer, county auditor, or any other officer, for performing or attempting to perform any duty authorized or directed by any statute of this state for the collection of the public revenue, such treasurer, auditor or other officer may, in the discretion of the court before whom such action is brought, by an order made by such court and entered in the minutes thereof, be allowed and paid out of the county treasury, reasonable fees of counsel and other expenses for defending such action. [1961 c 15 § 84.09.050. Prior: 1925 ex.s. c 130 § 110; 1897 c 71 § 90; 1893 c 124 § 93; RRS § 11271. Formerly RCW 84.56.420.]

84.09.060 Property tax advisor. See RCW 84.48.140.

84.09.070 Authority of operating agencies to levy taxes. Nothing in this title may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 56.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

84.09.080 List of excess inventory value—Distributions to taxing districts. (1) On or before December 15, 1983, each county assessor shall provide the department with a list of the amount of excess inventory value in each taxing district in the county.

(2) From amounts appropriated for this purpose, the department shall calculate the following amounts for each taxing district, distribute fifty-five percent of the amount to the taxing district on or before May 31 of the year for which the calculation is made, and distribute forty-five percent of the amount to the taxing district on or before November 30 of that year:

(a) For 1984, an amount equal to the district's 1984 levy rate multiplied by the district's excess inventory value;

(b) For 1985, an amount equal to seventy-five percent of the amount calculated for the district under subsection (2)(a) of this section;

(c) For 1986, an amount equal to fifty percent of the amount calculated for the district under subsection (2)(a) of this section;

(d) For 1987, an amount equal to twenty-five percent of the amount calculated for the district under subsection (2)(a) of this section. [1983 1st ex.s. c 62 § 4.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

"Excess inventory value" defined: RCW 84.36.475.

Rules and regulations, procedures: RCW 84.40.405.

Chapter 84.12

ASSESSMENT AND TAXATION OF PUBLIC UTILITIES

Sections

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84.12.360	Basis of apportionment.
84.12.370	Certification to county assessors—Entry upon tax rolls.
84.12.380	Assessment of nonoperating property.
84.12.390	Rules and regulations.

84.12.200 Definitions. For the purposes of this chapter and unless otherwise required by the context:

(1) "Department" without other designation means the department of revenue of the state of Washington.

(2) "Railroad company" shall mean and include any person owning or operating a railroad, street railway, suburban railroad or interurban railroad in this state, whether its line of railroad be maintained at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported; or owning any station, depot, terminal or bridge for railroad purposes, as owner, lessee or otherwise.

(3) "Airplane company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by aircraft, and engaged in the business of transporting persons and/or property for compensation, as owner, lessee or otherwise.

(4) "Electric light and power company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation,

transmission or distribution of electricity in this state, and engaged in the business of furnishing, transmitting, distributing or generating electrical energy for light, heat or power for compensation as owner, lessee or otherwise.

(5) "Telegraph company" shall mean and include any person owning, controlling, operating or managing any telegraph or cable line in this state, with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation, as owner, lessee or otherwise.

(6) "Telephone company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communication by telephone in this state through owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communication for compensation as owner, lessee or otherwise.

(7) "Gas company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the manufacture, transportation, or distribution of natural or manufactured gas in this state, and engaged for compensation in the business of furnishing gas for light, heat, power or other use, as owner, lessee or otherwise.

(8) "Pipe line company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance or transportation of oils, natural or manufactured gas and/or other substances, except water, by pipe line in this state, and engaged in such business for compensation, as owner, lessee or otherwise.

(9) "Water company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the supply, storage, distribution, diversion or carriage of water in this state, and engaged in the business of furnishing water for power, irrigation, manufacturing, domestic or other uses for compensation, as owner, lessee or otherwise.

(10) "Heating company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation and/or distribution of steam or hot water for heat, power, manufacturing or other purposes in this state, and engaged principally in business of furnishing, distributing, supplying or generating steam or hot water for heat, power, manufacturing or other purposes for compensation, as owner, lessee or otherwise.

(11) "Toll bridge company" shall mean and include any person owning, controlling, operating, or managing real or personal property, used for or in connection with or to facilitate the conveyance or transportation of persons and/or property over a bridge or bridge approach over any stream, river or body of water within, or partly within this state, and operated as a toll bridge for compensation, as owner, lessee, or otherwise.

(12) "Steamboat company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by vessel or ferry, upon the waters within this state, including the rivers and lakes and Puget Sound, between fixed termini or over a regular route, and engaged in the business of transporting persons and/or property for compensation as owner, lessee or otherwise.

(13) "Logging railroad company" shall mean and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of forest products by rail in this state, and engaged in the business of transporting forest products either as private carrier or carrier for hire.

(14) "Person" shall mean and include any individual, firm, copartnership, joint venture, association, corporation, trust, or any other group acting as a unit, whether mutual, cooperative or otherwise, and/or trustees or receivers appointed by any court.

(15) "Company" shall mean and include any railroad company, *motor vehicle transportation company, airplane company, electric light and power company, telegraph company, telephone company, gas company, pipe line company, water company, heating company, toll bridge company, steamboat company, or logging railroad company; and the term "companies" shall mean and include all of such companies.

(16) "Operating property" shall mean and include all property, real and personal, owned by any company, or held by it as occupant, lessee or otherwise, including all franchises and lands, buildings, rights-of-way, water powers, motor vehicles, wagons, horses, aircraft, aerodromes, hangars, office furniture, water mains, gas mains, pipe lines, pumping stations, tanks, tank farms, holders, reservoirs, telephone lines, telegraph lines, transmission and distribution lines, dams, generating plants, poles, wires, cables, conduits, switch boards, devices, appliances, instruments, equipment, machinery, vessels, ferries, landing slips, docks, roadbeds, tracks, terminals, rolling stock equipment, appurtenances and all other property of a like or different kind, situate within the state of Washington, used by the company in the conduct of its operations; and, in case of personal property used partly within and partly without the state, it shall mean and include a proportion of such personal property to be determined as in this chapter provided.

(17) "Nonoperating property" shall mean all physical property owned by any company, other than that used during the preceding calendar year in the conduct of its operations. It shall include all lands and/or buildings wholly used by any person other than the owning company. In cases where lands and/or buildings are used partially by the owning company in the conduct of its operations and partially by any other person not assessable under this chapter under lease, sublease, or other form of tenancy, the operating and nonoperating property of the company whose property is assessed hereunder shall be determined by the department of revenue in

such manner as will, in its judgment, secure the separate valuation of such operating and nonoperating property upon a fair and equitable basis. The amount of operating revenue received from tenants or occupants of property of the owning company shall not be considered material in determining the classification of such property. [1987 c 153 § 1; 1975 1st ex.s. c 278 § 159; 1961 c 15 § 84.12.200. Prior: 1935 c 123 § 1; 1925 ex.s. c 130 § 36; 1907 c 131 § 2; 1907 c 78 § 2; RRS § 11156-1. Formerly RCW 84.12.010 and 84.12.020, part.]

***Reviser's note:** The assessment authority for motor vehicle transportation companies was transferred to the county assessors by 1987 c 153.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.210 Property used but not owned deemed sole operating property of owning company. Property used but not owned by an operating company shall, whether such use be exclusive or jointly with others, be deemed the sole operating property of the owning company. [1961 c 15 § 84.12.210. Prior: 1935 c 123 § 1, subdivision (19); RRS § 11156-1(19). Formerly RCW 84.12.020, part.]

84.12.220 Jurisdiction to determine operating, nonoperating property. In all matters relating to assessment and taxation the department of revenue shall have jurisdiction to determine what is operating property and what is nonoperating property. [1975 1st ex.s. c 278 § 160; 1961 c 15 § 84.12.220. Prior: 1935 c 123 § 2; RRS § 11156-2. Formerly RCW 84.12.020, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.230 Annual reports to be filed. Each company doing business in this state shall annually on or before the 15th day of March, make and file with the department of revenue an annual report, in such manner, upon such form, and giving such information as the department may direct: *Provided*, That the department, upon written request filed on or before such date and for good cause shown therein, may allow an extension of time for filing not to exceed sixty days. At the time of making such report each company shall also be required to furnish to the department the annual reports of the board of directors, or other officers to the stockholders of the company, duplicate copies of the annual reports made to the interstate commerce commission and to the utilities and transportation commission of this state and duplicate copies of such other reports as the department may direct: *Provided*, That the duplicate copies of these annual reports shall not be due until such time as they are due to the stockholders or commissioners. [1984 c 132 § 1; 1975 1st ex.s. c 278 § 161; 1961 c 15 § 84.12.230. Prior: 1935 c 123 § 3; 1925 ex.s. c 130 § 39; 1907 c 131 § 5; 1907 c 78 § 5; 1897 c 71 § 40; 1893 c 124 § 40; 1891 c 140 § 27; 1890 p 541 § 27; RRS § 11156-3. Formerly RCW 84.12.030.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

(1987 Ed.)

84.12.240 Access to books and records. The department of revenue shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state; and it shall have the power to issue subpoenas, signed by the director of the department or any duly authorized employee and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence and to produce books and papers. The director of the department or any employee officially designated by the department is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by the director or any duly authorized employee of the department, upon a proper showing that such witness has been duly served with a subpoena and has refused to appear before the said department. In case of the refusal of a witness to produce books, papers, documents, or accounts, or to give evidence on matters material to the hearing, the department may institute proceedings in the proper superior court to compel such witness to testify or to produce such books or papers, and to punish him for such failure or refusal. All process issued by the department shall be served by the sheriff of the proper county or by a duly authorized agent of the department and such service, if made by the sheriff, shall be certified by him to the department of revenue without any compensation therefor. Persons appearing before the department in obedience to a subpoena shall receive the same compensation as witnesses in the superior court. The records, books, accounts and papers of each company shall be subject to visitation, investigation or examination by the department, or any employee thereof officially designated by the department. All real and/or personal property of any company shall be subject to visitation, investigation, examination and/or listing at any and all times by the department, or any person officially designated by the director. [1975 1st ex.s. c 278 § 162; 1973 c 95 § 9; 1961 c 15 § 84.12.240. Prior: 1935 c 123 § 4; 1925 ex.s. c 130 § 37; 1907 c 131 § 3; 1907 c 78 § 3; RRS § 11156-4. Formerly RCW 84.12.080.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.250 Depositions may be taken. The department of revenue, in any matter material to the valuation, assessment or taxation of the operating property of any company, may cause the deposition of witnesses residing without the state or absent therefrom, to be taken upon notice to the company interested in like manner as the depositions of witnesses are taken in civil actions in the superior court. [1975 1st ex.s. c 278 § 163; 1961 c 15 § 84.12.250. Prior: 1935 c 123 § 5; 1925 ex.s. c 130 § 38; 1907 c 131 § 4; 1907 c 78 § 4; RRS § 11156-5. Formerly RCW 84.12.090.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.260 Default valuation by department of revenue—Penalty—Estoppel. (1) If any company shall

fail to materially comply with the provisions of RCW 84.12.230, the department shall add to the value of such company, as a penalty for such failure, five percent for every thirty days or fraction thereof, not to exceed ten percent, that the company fails to comply.

(2) If any company, or any of its officers or agents shall refuse or neglect to make any report required by this chapter, or by the department of revenue, or shall refuse to permit an inspection and examination of its records, books, accounts, papers or property requested by the department of revenue, or shall refuse or neglect to appear before the department of revenue in obedience to a subpoena, the department of revenue shall inform itself to the best of its ability of the matters required to be known, in order to discharge its duties with respect to valuation and assessment of the property of such company, and the department shall add to the value so ascertained twenty-five percent as a penalty for such failure or refusal and such company shall be estopped to question or impeach the assessment of the department in any hearing or proceeding thereafter. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section. [1984 c 132 § 2; 1975 1st ex.s. c 278 § 164; 1961 c 15 § 84.12.260. Prior: 1935 c 123 § 6; 1925 ex.s. c 130 § 41; 1907 c 131 § 7; 1907 c 78 § 6; 1891 c 140 § 37; 1890 p 544 § 36; RRS § 11156-6. Formerly RCW 84.12.100.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.270 Annual assessment—Sources of information. The department of revenue shall annually make an assessment of the operating property of all companies; and between the fifteenth day of March and the first day of July of each of said years shall prepare an assessment roll upon which it shall enter and assess the true cash value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the true cash value of such property the department of revenue may inspect the property belonging to said companies and may take into consideration any information or knowledge obtained by it from such examination and inspection of such property, or of the books, records and accounts of such companies, the statements filed as required by this chapter, the reports, statements or returns of such companies filed in the office of any board, office or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the assessed valuation of any and all property of such companies, whether operating or nonoperating property, and whether situated within or outside the state, and any other facts, evidence or information that may be obtainable bearing upon the value of the operating property: *Provided*, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character and true cash value of the operating property of such company. [1975 1st

ex.s. c 278 § 165; 1961 c 15 § 84.12.270. Prior: 1939 c 206 § 19; 1935 c 123 § 7; 1925 ex.s. c 130 § 43; 1907 c 131 § 8; 1907 c 78 § 7; 1891 c 140 §§ 28-31; 1890 p 541 §§ 26-33; RRS § 11156-7. Formerly RCW 84.12.040.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.280 Classification of real and personal property. In making the assessment of the operating property of any railroad or logging railroad company and in the apportionment of the values and the taxation thereof, all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round houses, machine shops, or other buildings belonging to the company, used in the operation thereof, without separating the same into land and improvements, shall be assessed as real property. And the rolling stock and other movable property belonging to any railroad or logging railroad company shall be considered as personal property and taxed as such: *Provided*, That all of the operating property of street railway companies shall be assessed and taxed as personal property.

All of the operating property of airplane companies, telegraph companies, pipe line companies, water companies and toll bridge companies; the floating equipment of steamboat companies, and all of the operating property other than lands and buildings of electric light and power companies, telephone companies, gas companies and heating companies shall be assessed and taxed as personal property. [1987 c 153 § 2; 1961 c 15 § 84.12-280. Prior: 1935 c 123 § 8; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; 1891 c 140 §§ 28-31; 1890 p 541 §§ 26-33; RRS § 11156-8. Formerly RCW 84.12.050.]

84.12.300 Valuation of interstate utility—Apportionment of system value to state. In determining the value of the operating property within this state of any company, the properties of which lie partly within and partly without this state, the department of revenue may, among other things, take into consideration the value of the whole system as a unit, and for such purpose may determine, insofar as the same is reasonably ascertainable, the salvage value, the actual cost new, the cost of reproduction new less depreciation and plus appreciation, the par value, actual value and market value of the company's outstanding stocks and bonds during one or more preceding years, the past, present and prospective gross and net earnings of the whole system as a unit.

In apportioning such system value to the state, the department of revenue shall consider relative costs, relative reproduction cost, relative future prospects and relative track mileage and the distribution of terminal properties within and without the state and such other matters and things as the department may deem pertinent.

The department may also take into consideration the actual cost, cost of reproduction new, and cost of reproduction new less depreciation, earning capacity and future prospects of the property, located within the state and all other matters and things deemed pertinent by the department of revenue. [1975 1st ex.s. c 278 § 166; 1961 c 15 § 84.12.300. Prior: 1935 c 123 § 9; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; RRS § 11156-9. Formerly RCW 84.12.060.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.310 Deduction of nonoperating property. For the purpose of determining the system value of the operating property of any such company, the department of revenue shall deduct from the actual cash value of the total assets of such company, the actual cash value of all nonoperating property owned by such company. For such purpose the department of revenue may require of the assessors of the various counties within this state a detailed list of such company's properties assessed by them, together with the assessable or assessed value thereof: *Provided*, That such assessed or assessable value shall be advisory only and not conclusive on the department of revenue as to the value thereof. [1975 1st ex.s. c 278 § 167; 1961 c 15 § 84.12.310. Prior: 1935 c 123 § 10; RRS § 11156-10. Formerly RCW 84.12.070.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.320 Persons bound by notice. Every person, company or companies operating any property in this state as defined in this chapter shall be the representative of every title and interest in the property as owner, lessee or otherwise, and notice to such person shall be notice to all interests in the property for the purpose of assessment and taxation. The assessment and taxation of the property of the company in the name of the owner, lessee or operating company shall be deemed and held an assessment and taxation of all the title and interest in such property of every kind and nature. [1961 c 15 § 84.12.320. Prior: 1935 c 123 § 11; RRS § 11156-11. Formerly RCW 84.12.120.]

84.12.330 Assessment roll—Notice of valuation. Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of subdivision (17) of RCW 84.12.200, as applied to said company, following which shall be entered the actual cash value of the operating property as determined by the department of revenue. No assessment shall be invalidated by reason of a mistake in the name of the company assessed, or the omission of the name of the owner or by the entry as owner of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the actual cash value of the operating property of the company, as herein required, it shall notify the company by mail of the valuation determined by it and entered upon said

roll. [1975 1st ex.s. c 278 § 168; 1961 c 15 § 84.12.330. Prior: 1935 c 123 § 12; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; 1891 c 140 § 35; 1890 p 543 § 35; RRS § 11156-12. Formerly RCW 84.12.110.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.340 Hearings on assessment, time and place of. At any time between the tenth and twenty-fifth days of July, inclusive, following the making of the assessment, every company shall be entitled on its own motion, presented to the department of revenue before the tenth day of July, to a hearing and to present evidence before the department of revenue, relating to the value of its operating property and to the value of other taxable property in the counties in which its operating property is situated. Upon request in writing for such hearing, the department shall appoint a time and place therefor, within the period aforesaid, the hearing to be conducted in such manner as the department shall direct. Hearings provided for in this section may be held at such times and in such places throughout the state as the department may deem proper or necessary, may be adjourned from time to time and from place to place and may be conducted by the department of revenue or by such member or members thereof as may be duly delegated to act for it. Testimony taken before less than the entire department of revenue shall be reported and a transcript thereof filed with the department of revenue prior to its decision. [1975 1st ex.s. c 278 § 169; 1961 c 15 § 84.12.340. Prior: 1953 c 162 § 1; 1939 c 206 § 20; 1935 c 123 § 13; RRS § 11156-13. Formerly RCW 84.12.130.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.350 Determination of true value by department of revenue—Apportionment. Upon determination by the department of revenue of the true and correct actual cash value of the property appearing on such rolls it shall apportion such value to the respective counties entitled thereto, as hereinafter provided, and shall determine the equalized assessed valuation of such property in each such county and in the several taxing districts therein, by applying to such actual apportioned value the same ratio as the ratio of assessed to actual value of the general property in such county: *Provided*, That, whenever the amount of the true and correct value of the operating property of any company otherwise apportionable to any county or other taxing district shall be less than two hundred fifty dollars, such amount need not be apportioned to such county or taxing district but may be added to the amount apportioned to an adjacent county or taxing district. [1967 ex.s. c 26 § 17; 1961 c 15 § 84.12.350. Prior: 1939 c 206 § 21; 1935 c 123 § 14; RRS § 11156-14. Formerly RCW 84.12.140.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

84.12.360 Basis of apportionment. The actual cash value of the operating property assessed to a company,

as fixed and determined by the state board of equalization, shall be apportioned by the department of revenue to the respective counties and to the taxing districts thereof wherein such property is located in the following manner:

(1) Property of steam, suburban, and interurban railroad companies, telegraph companies and pipe line companies—upon the basis of that proportion of the value of the total operating property within the state which the mileage of track, as classified by the department of revenue (in case of railroads), mileage of wire (in the case of telegraph companies) and mileage of pipe line (in the case of pipe line companies) within each county or taxing district bears to the total mileage thereof within the state, at the end of the calendar year last past. For the purpose of such apportionment the department may classify railroad track.

(2) Property of street railroad companies, telephone companies, electric light and power companies, gas companies, water companies, heating companies and toll bridge companies—upon the basis of relative value of the operating property within each county and taxing district to the value of the total operating property within the state to be determined by such factors as the department of revenue shall deem proper.

(3) Planes or other aircraft of airplane companies and watercraft of steamboat companies—upon the basis of such factor or factors of allocation, to be determined by the department of revenue, as will secure a substantially fair and equitable division between counties and other taxing districts.

All other property of airplane companies and steamboat companies—upon the basis set forth in subdivision (2) hereof.

The basis of apportionment with reference to all public utility companies above prescribed shall not be deemed exclusive and the department of revenue in apportioning values of such companies may also take into consideration such other information, facts, circumstances, or allocation factors as will enable it to make a substantially just and correct valuation of the operating property of such companies within the state and within each county thereof. [1987 c 153 § 3; 1975 1st ex.s. c 278 § 170; 1961 c 15 § 84.12.360. Prior: 1955 c 120 § 1; 1935 c 123 § 15; 1925 ex.s. c 130 § 47; 1917 c 25 § 1; 1907 c 78 § 11; 1891 c 140 § 33; 1890 p 541 § 30; RRS § 11156–15. Formerly RCW 84.12.150.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.370 Certification to county assessors—Entry upon tax rolls. When the state board of equalization shall have determined the equalized assessed value of the operating property of each company in each of the respective counties and in the taxing districts thereof, as hereinabove provided, the department of revenue shall certify such equalized assessed value to the county assessor of the proper county. The county assessor shall enter the company's real operating property upon the real property tax rolls and the company's personal operating property upon the personal property tax rolls of his

county, together with the values so apportioned, and the same shall be and constitute the assessed valuation of the operating property of the company in such county and the taxing districts therein for that year, upon which taxes shall be levied and collected in the same manner as on the general property of such county. [1975 1st ex.s. c 278 § 171; 1961 c 15 § 84.12.370. Prior: 1935 c 123 § 16; RRS § 11156–16. Formerly RCW 84.12.160.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.12.380 Assessment of nonoperating property. All property of any company not assessed as operating property under the provisions of this chapter shall be assessed by the assessor of the county wherein the same may be located or situate the same as the general property of the county. [1961 c 15 § 84.12.380. Prior: 1935 c 123 § 17; 1891 c 140 § 34; 1890 p 542 § 33; RRS § 11156–17. Formerly RCW 84.12.180.]

84.12.390 Rules and regulations. The department of revenue shall have the power to make such rules and regulations, not inconsistent herewith, as may be convenient and necessary to enforce and carry out the provisions of this chapter. [1975 1st ex.s. c 278 § 172; 1961 c 15 § 84.12.390. Prior: 1935 c 123 § 18; RRS § 11156–18. Formerly RCW 84.08.070, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.16

ASSESSMENT AND TAXATION OF PRIVATE CAR COMPANIES

Sections

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84.16.140	Assessment of nonoperating property.

84.16.010 Definitions. For the purposes of this chapter and unless otherwise required by the context:

(1) The term "department" without other designation means the department of revenue of the state of Washington.

(2) The term "private car company" or "company" shall mean and include any person, copartnership, association, company or corporation owning, controlling, operating or managing stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars or any

other kind of cars, used for transportation of property, by or upon railroad lines running in, into or through the state of Washington when such railroad lines are not owned or leased by such person, copartnership, association, company or corporation; or owning, controlling, operating or managing sleeping cars, parlor cars, buffet cars, tourist cars or any other kind of cars, used for transportation of persons by or upon railroads on lines running in, into or through the state of Washington, when such railroad lines are not owned or leased by such person, copartnership, association, company or corporation and upon which an extra charge in addition to the railroad transportation fare is made.

(3) The term "operating property" shall mean and include all rolling stock and car equipment owned by any private car company, or held by it as occupant, lessee or otherwise, including its franchises used and reasonably necessary in carrying on the business of such company; and in the case of rolling stock and car equipment used partly within and partly without the state, shall mean and include a proportion of such rolling stock and car equipment to be determined as in this chapter provided; and all such property shall, for the purposes of this chapter be deemed personal property. [1975 1st ex.s. c 278 § 173; 1961 c 15 § 84.16.010. Prior: 1933 c 146 § 1; RRS § 11172-1; prior: 1907 c 36 § 1.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.020 Annual statement of private car companies. Every private car company shall annually on or before the first day of May, make and file with the department of revenue in such form and upon such blanks as the department of revenue may provide and furnish, a statement, for the year ending December thirty-first next preceding, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, containing the following facts:

(1) The name of the company, the nature of the business conducted by the company, and under the laws of what state or country organized; the location of its principal office; the name and post office address of its president, secretary, auditor, treasurer, superintendent and general manager; the name and post office address of the chief officer or managing agent or attorney in fact in Washington.

(2) The total number of cars of every class used in transacting business on all lines of railroad, within the state and outside the state; together with the original cost and the fair average value per car of all cars of each of such classes.

(3) The total number of miles of railroad main track over which such cars were used within this state and within each county in this state.

(4) The total number of car miles made by all cars on each of the several lines of railroad in this state, and the total number of car miles made by all cars on all railroads within and without the state during the year.

(5) A statement in detail of the entire gross receipts and net earnings of the company during the year within the state and of the entire system, from all sources.

(6) Such other facts or information as the department of revenue may require in the form of return prescribed by it.

The department of revenue shall have power to prescribe directions, rules and regulations to be followed in making the report required herein. [1975 1st ex.s. c 278 § 174; 1961 c 15 § 84.16.020. Prior: 1933 c 146 § 2; RRS § 11172-2; prior: 1907 c 36 § 2.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.030 Annual statement of railroad companies. The president or other officer of every railroad company whose lines run in, into or through this state, shall, on or before the first day of April in each year, furnish to the department of revenue a statement, verified by the affidavit of the officer making the same, showing as to every private car company respectively, the name of the company, the class of car and the total number of miles made by each class of cars, and the total number of miles made by all cars on its lines, branches, sidings, spurs or warehouse tracks, within this state during the year ending on the thirty-first day of December next preceding. [1975 1st ex.s. c 278 § 175; 1961 c 15 § 84.16.030. Prior: 1933 c 146 § 3; RRS § 11172-3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.032 Access to books and records. The department of revenue shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state; and shall have the power, by summons signed by director and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence and to produce books and papers. The director or any employee officially designated by the director is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by the department, upon a proper showing that such witness has been duly served with a summons and has refused to appear before the said department. In case of the refusal of a witness to produce books, papers, documents or accounts or to give evidence on matters material to the hearing, the department may institute proceedings in the proper superior court to compel such witness to testify, or to produce such books or papers and to punish him for the refusal. All summons and process issued by the department shall be served by the sheriff of the proper county and such service certified by him to the department of revenue without any compensation therefor. Persons appearing before the department in obedience to a summons, shall, in the discretion of the department, receive the same compensation as witnesses in the superior court. The records, books, accounts and papers of each company shall be subject to visitation, investigation or examination by the department, or any employee thereof officially designated by the director. All real

and/or personal property of any company shall be subject to visitation, investigation, examination and/or listing at any and all times by the department, or any person employed by the department. [1975 1st ex.s. c 278 § 176; 1973 c 95 § 10; 1961 c 15 § 84.16.032. Prior: 1933 c 146 § 4; RRS § 11172-4; prior: 1907 c 36 § 6. Formerly RCW 84.16.060.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.034 Depositions may be taken, when. The department of revenue in any matter material to the valuation, assessment or taxation of the property of any company, may cause the deposition of witnesses residing without the state or absent therefrom, to be taken upon notice to the company interested in like manner as the deposition of witnesses are taken in civil actions in the superior court. [1975 1st ex.s. c 278 § 177; 1961 c 15 § 84.16.034. Prior: 1933 c 146 § 5; RRS § 11172-5. Formerly RCW 84.16.070.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.036 Default valuation by department of revenue—Penalty—Estoppel. (1) If any company shall fail to comply with the provisions of RCW 84.16.020, the department shall add to the value of such company, as a penalty for such failure, five percent for every thirty days or fraction thereof, not to exceed ten percent, that the company fails to comply.

(2) If any company, or its officer or agent, shall refuse or neglect to make any report required by this chapter, or by the department of revenue, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts, papers or property requested by the department of revenue, or shall refuse or neglect to appear before the department in obedience to a summons, the department shall inform itself the best it may of the matters to be known, in order to discharge its duties with respect to valuation and assessment of the property of such company; and the department shall add to the value so ascertained twenty-five percent as a penalty for the failure or refusal of such company to make its report and such company shall be estopped to question or impeach the assessment of the department of revenue in any hearing or proceeding thereafter. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section. [1984 c 132 § 3; 1975 1st ex.s. c 278 § 178; 1961 c 15 § 84.16.036. Prior: 1933 c 146 § 6; RRS § 11172-6; prior: 1907 c 36 §§ 5, 6. Formerly RCW 84.16.080.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.040 Annual assessment—Sources of information. The department of revenue shall annually make an assessment of the operating property of each private car company; and between the first day of May and the first day of July of each of said years shall prepare an assessment roll upon which it shall enter and assess the true cash value of all the operating property of each of

such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the true cash value of such property the department of revenue may take into consideration any information or knowledge obtained by it from an examination and inspection of such property, or of the books, records and accounts of such companies, the statements filed as required by this chapter, the reports, statements or returns of such companies filed in the office of any board, office or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the assessed valuation of any and all property of such companies, whether operating property or nonoperating property, and whether situated within or without the state, and any other facts, evidences or information that may be obtainable bearing upon the value of the operating property: *Provided*, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character and true cash value of the operating property of such company. [1975 1st ex.s. c 278 § 179; 1961 c 15 § 84.16.040. Prior: 1939 c 206 § 22; 1933 c 146 § 7; RRS § 11172-7; prior: 1907 c 36 § 7.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.050 Basis of valuation—Apportionment of system value to state. The department of revenue may, in determining the actual cash value of the operating property to be placed on the assessment roll value the entire property as a unit. If the company owns, leases, operates or uses property partly within and partly without the state, the department of revenue may determine the value of the operating property within this state by the proportion that the value of such property bears to the value of the entire operating property of the company, both within and without this state. In determining the operating property which is located within this state the department of revenue may consider and base such determination on the proportion which the number of car miles of the various classes of cars made in this state bears to the total number of car miles made by the same cars within and without this state, or to the total number of car miles made by all cars of the various classes within and without this state. If the value of the operating property of the company cannot be fairly determined in such manner the department of revenue may use any other reasonable and fair method to determine the value of the operating property of the company within this state. [1975 1st ex.s. c 278 § 180; 1961 c 15 § 84.16.050. Prior: 1933 c 146 § 8; RRS § 11172-8; prior: 1907 c 36 § 7.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.090 Assessment roll—Notice of valuation. Upon the assessment roll shall be placed after the name of each company a general description of the operating

property of the company, which shall be considered sufficient if described in the language of subdivision (3) of RCW 84.16.010 or otherwise, following which shall be entered the actual cash value of the operating property as determined by the department of revenue. No assessment shall be invalid by a mistake in the name of the company assessed, by omission of the name of the owner or by the entry of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the actual cash value of the operating property of the company, as herein required, it shall notify the company by mail of the valuation determined by it and entered upon said roll; and thereupon such valuation shall become the actual cash value of the operating property of the company, subject to revision or correction by the state board of equalization as hereinafter provided; and shall be the valuation upon which, after equalization by the state board of equalization as hereinafter provided, the taxes of such company shall be based and computed. [1975 1st ex.s. c 278 § 181; 1961 c 15 § 84.16.090. Prior: 1933 c 146 § 9; RRS § 11172-9; prior: 1907 c 36 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.100 Hearings, time and place of. Every company assessed under the provisions of this chapter shall be entitled on its own motion to a hearing and to present evidence before the department of revenue, at any time between the twentieth day of July and the fifteenth day of August, relating to the value of the operating property of such company and to the value of the other taxable property in the counties in which the operating property of such company is situate. Upon request in writing for such hearing, which must be presented to the department of revenue on or before the twentieth day of July following the making of the assessment, the department shall appoint a time and place therefor, within the respective periods aforesaid, the hearing to be conducted in such manner as the department shall direct. Hearings provided for in this section may be held at such times and in such places throughout the state as the department may deem proper or necessary and may be adjourned from time to time and from place to place. [1975 1st ex.s. c 278 § 182; 1961 c 15 § 84.16.100. Prior: 1939 c 206 § 23; 1933 c 146 § 10; RRS § 11172-10.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.110 Determination of true value by department of revenue—Apportionment to counties. Upon determination by the department of revenue of the true and correct actual cash value of the property appearing on such rolls the department shall apportion such value to the respective counties entitled thereto as hereinafter provided, and shall determine the equalized or assessed valuation of such property in such counties by applying to such actual apportioned value the same ratio as the ratio of assessed to actual value of the general property of the respective counties: *Provided*, That, whenever the

amount of the true and correct value of the operating property of any company otherwise apportionable to any county shall be less than two hundred fifty dollars, such amount need not be apportioned to such county but may be added to the amount apportioned to an adjacent county. [1967 ex.s. c 26 § 18; 1961 c 15 § 84.16.110. Prior: 1939 c 206 § 24; 1933 c 146 § 11; RRS § 11172-11.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

84.16.120 Basis of apportionment. The actual cash value of the property of each company as fixed and determined by the state board of equalization as herein provided shall be apportioned to the respective counties in the following manner:

(1) If all the operating property of the company is situated entirely within a county and none of such property is located within, extends into, or through or is operated into or through any other county, the entire value thereof shall be apportioned to the county within which such property is situate, located and operated.

(2) If the operating property of any company is situated or located within, extends into or is operated into or through more than one county, the value thereof shall be apportioned to the respective counties into or through which its cars are operated in the proportion that the length of main line track of the respective railroads moving such cars in such counties bears to the total length of main line track of such respective railroads in this state.

(3) If the property of any company is of such character that it will not be reasonable, feasible or fair to apportion the value as hereinabove provided, the value thereof shall be apportioned between the respective counties into or through which such property extends or is operated or in which the same is located in such manner as may be reasonable, feasible and fair. [1961 c 15 § 84.16.120. Prior: 1933 c 146 § 12; RRS § 11172-12; prior: 1907 c 36 § 7.]

84.16.130 Certification to county assessors—Apportionment to taxing districts—Entry upon tax rolls. When the state board of equalization shall have determined the equalized or assessed value of the operating property of each company in the respective counties as hereinabove provided, the department of revenue shall certify such equalized or assessed value to the county assessor of the proper county; and the county assessor shall apportion and distribute such assessed or equalized valuation to and between the several taxing districts of his county entitled to a proportionate value thereof in the manner prescribed in RCW 84.16.120 for apportionment of values between counties. The county assessor shall enter such assessment upon the personal property tax rolls of his county, together with the values so apportioned, and the same shall be and constitute the assessed valuation of the operating company in such county for that year, upon which taxes shall be levied and collected the same as on general property of the

county. [1975 1st ex.s. c 278 § 183; 1961 c 15 § 84.16-.130. Prior: 1939 c 206 § 25; 1933 c 146 § 13; RRS § 11172-13.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.16.140 Assessment of nonoperating property. All property of any company not assessed as operating property under the provisions of this chapter shall be assessed by the assessor of the county wherein the same may be located or situate the same as the general property of the county. [1961 c 15 § 84.16.140. Prior: 1933 c 146 § 14; RRS § 11172-14.]

Chapter 84.20

EASEMENTS OF PUBLIC UTILITIES

Sections

84.20.010	Easements taxable as personalty.
84.20.020	Servient estate taxable as realty.
84.20.030	Sale for taxes—Realty to be sold subject to easement.
84.20.040	Realty not subject to tax on easement or property thereon.
84.20.050	Railroads excepted.

84.20.010 Easements taxable as personalty. Easements and the property constructed upon or occupying such easements owned by public service corporations shall be assessed and taxed together as personal property and the taxes thereon shall be collected as personal property taxes. [1961 c 15 § 84.20.010. Prior: 1929 c 199 § 1; RRS § 11188.]

84.20.020 Servient estate taxable as realty. Real estate subject to any such easement shall be assessed and taxed as real estate subject to such easement. [1961 c 15 § 84.20.020. Prior: 1929 c 199 § 2; RRS § 11189.]

84.20.030 Sale for taxes—Realty to be sold subject to easement. When any such real estate is sold for delinquent taxes thereon it shall be sold subject to such easement, and the purchaser at any such tax sale shall acquire no title to such easement or the property constructed upon or occupying the same. [1961 c 15 § 84.20.030. Prior: 1929 c 199 § 3; RRS § 11190.]

84.20.040 Realty not subject to tax on easement or property thereon. Real estate subject to any such easement shall not be chargeable with any tax levied upon such easement or the property constructed upon or occupying such easement and shall not be sold for the nonpayment of any such tax. [1961 c 15 § 84.20.040. Prior: 1929 c 199 § 4; RRS § 11191.]

84.20.050 Railroads excepted. This chapter shall not apply to railroad easements or property. [1961 c 15 § 84.20.050. Prior: 1929 c 199 § 5; RRS § 11192.]

Chapter 84.24

REASSESSMENT OF PROPERTY

Sections

84.24.010	Definitions.
84.24.020	Relisting for claimed error in taxation.
84.24.030	Notice—Publication and service.
84.24.040	Hearing.
84.24.050	Certification and entry on rolls—Relisting and relevy.
84.24.060	Substituted for original tax—Interest.
84.24.070	Refunding of excess—County tax refund fund.

84.24.010 Definitions. The terms used in this chapter shall be construed as follows: The phrase "error in taxation" shall mean and embrace any action on the part of any assessing or taxing officer or board resulting in taxes being levied on any property at an amount in excess of what they should have been, or resulting in a tax void in whole or in part; the word "owner" shall be construed to mean the person owning the legal title to the property which shall be reassessed and retaxed pursuant to this chapter as shown by the county auditor's records; the phrase "relevy tax" shall mean the tax levied on any property as a result of a reassessment as provided in this chapter; the phrase "original tax" shall mean the tax originally levied upon the property for the year or years for which a reassessment and relevy is made; the phrase "original assessment" shall mean all of the proceedings of the assessing and taxing officers leading up to the actual levying of the original tax; the phrase "original assessment date" shall mean the date as of which the property in question was valued for the purpose of fixing the original tax thereon; the word "hearing" shall mean a proceeding in which any taxpayer or other person having an interest in the matter concerning which such hearing is had, is afforded an opportunity of making such showing with respect thereto, as he may desire; the phrase "department of revenue" shall mean the department of revenue of the state of Washington; the term "person" shall import both the singular and plural as the case may demand, or as shall be applicable, and shall include individuals, copartnerships, corporations, and unincorporated societies and associations. [1975 1st ex.s. c 278 § 184; 1961 c 15 § 84.24.010. Prior: 1931 c 106 § 1; RRS § 11301.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.24.020 Relisting for claimed error in taxation. Whenever it is alleged in any protest accompanying the payment of taxes heretofore or hereafter filed with any county or state board or officer, or in any petition or complaint heretofore or hereafter served or filed in any court for or on behalf of such taxpayer that any error in taxation has occurred in the assessment or taxation, or reassessment or retaxation, heretofore or hereafter made of any property taxable in this state, and that such assessment or reassessment or tax is excessive or void in whole or in part, such property may forthwith, in the manner provided in this chapter, be relisted, revalued, reassessed and retaxed for the year or years in the assessment and taxation, or reassessment and retaxation,

of which such error or errors in taxation are so alleged to have been made. One or more reassessments shall not exhaust the assessing officials' power to reassess, where authority to make a further reassessment is given by judicial decree. [1961 c 15 § 84.24.020. Prior: 1941 c 152 § 1; 1931 c 106 § 2; Rem. Supp. 1941 § 11302.]

84.24.030 Notice—Publication and service. The department of revenue shall cause a notice, signed by it, to be served upon the owner in the manner hereinafter provided, which notice shall be addressed to the owner and also "to all persons known and unknown having or claiming any interest in the property in this notice described", shall describe the property with the same particularity as the same is required by law to be described upon the assessment rolls, and shall give notice that at a time to be fixed in the notice (which time shall not be less than ten, nor more than thirty days after the date of the last publication of the notice hereinafter provided), the department of revenue will, at its office proceed to reassess and retax the property for the particular year or years involved (naming them) and further giving notice that the owner or other interested persons may appear at the time and place set forth in the notice, and show cause, if any there be, why the reassessment and retaxation should not be made, and make such showing as they shall desire to make as to the claimed illegality of the tax. The notice shall also be published once a week for three consecutive weeks in a newspaper of general circulation in one of the counties in which the property is located. A copy of the notice shall also be mailed not less than ten days prior to the date fixed for the hearing to the prosecuting attorney of each county in which the property is located.

The notice referred to in this section shall be served either (1) in the same manner as personal service of summons in civil actions is made, or (2) by depositing a true copy thereof in the United States post office at Olympia, Washington, securely wrapped and plainly addressed to the owner at his last known address. Proof of service shall be made by the affidavit of the person making the service. [1985 c 469 § 64; 1975 1st ex.s. c 278 § 185; 1961 c 15 § 84.24.030. Prior: 1931 c 106 § 3; RRS § 11303.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.24.040 Hearing. A hearing shall be had at the time and place set forth in the notice provided for in RCW 84.24.030, and thereafter the department of revenue shall determine, as of the original assessment date, and in the manner provided by existing law, the cash market value of the property in question, and the ratio between cash market value and assessed value of the other taxable property in the county where such property is located, and shall fix the equalized value of the property in question at that percentage of its cash market value as of the original assessment date, which the equalized assessed value of the general taxable property in the county where such reassessed property is located, bore to its cash market value: *Provided, however,* That

in case of a protest, complaint or petition based upon an alleged excessive assessment, the reassessment shall not exceed the original assessment. [1975 1st ex.s. c 278 § 186; 1961 c 15 § 84.24.040. Prior: 1931 c 106 § 4; RRS § 11304.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.24.050 Certification and entry on rolls—Re-listing and relevy. If the original assessment was made by a county assessor, the equalized valuation of such property for the purpose of such reassessment and any other corrections made by the department of revenue in the original tax shall be forthwith certified to the county assessor of the county in which such reassessed property is located, and the same shall be entered and the tax extended by such assessor under an appropriate heading, in the assessment rolls for the year or years for which such reassessment is made, in the same manner as provided by existing law for the entry and extension of the original assessment of such property. If the original assessment was made by the department of revenue, the equalized valuation of such property for the purpose of such reassessment shall be forthwith entered by the department of revenue under an appropriate heading, in its assessment rolls for the year or years for which such reassessment was made, and shall be apportioned to the county or counties, and certified to the county assessors of the proper counties, and shall be distributed by the county assessors among taxing districts, and shall be placed upon the county tax rolls, in the same manner as provided by existing law for the entry and extension of the original assessment of such property.

The officers authorized by existing law to levy and collect taxes on said property shall forthwith proceed to relist said property, and to relevy and collect the tax thereon as of the original assessment year or years, in the same manner as provided by existing law for the listing of property, and the levying and collection of taxes thereon, save and except, that each such officer shall, in turn, perform the several duties to be performed by him in connection with such reassessment and retaxation, as soon as the completion of the duties of other officers in connection therewith make it possible for him to do so: *Provided,* That such tax as reassessed and relieved shall be figured and determined at the same tax rate as the original tax on said property for the year or years for which said reassessment was made, was or should have been, figured and determined. [1975 1st ex.s. c 278 § 187; 1961 c 15 § 84.24.050. Prior: 1931 c 106 § 5; RRS § 11305.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.24.060 Substituted for original tax—Interest. The tax as so relieved and reassessed shall, for all purposes, be deemed to have been levied on said property as of the time that the original tax was levied, and in substitution therefor, and all payments made upon such original tax shall be deemed to have been made upon, and shall be credited upon, such relieved tax, as of the

time and with the same effect as though made on such relieved tax: *Provided, however,* That any portion of the relieved tax that shall not have been paid prior to the date of delinquency of the original tax shall bear interest at the same rate and from the same dates as the unpaid portion of the original tax. [1961 c 15 § 84.24.060. Prior: 1931 c 106 § 6; RRS § 11306.]

84.24.070 Refunding of excess—County tax refund fund. As soon as any such relieved tax shall have been reassessed and relieved as herein provided, the board of county commissioners shall forthwith, by proper resolution, order and direct the repayment to the owner of the property affected, of such an amount as the payments theretofore made upon the original tax exceed the amount of such relieved tax (the amount of which shall be certified by the county treasurer to said commissioners), together with interest on such excess at six percent per annum from the date or dates of such excess payment, and such repayment shall be made by warrants drawn upon a fund in said treasury hereby created to be known and designated as the county tax refund fund.

Annually, at the time required by law for the levying of taxes for county purposes the proper county officers required by law to make and enter such tax levies, shall make and enter a tax levy or levies for said county tax refund fund as follows:

(1) A levy upon all of the taxable property within the county for the amount of all taxes collected by the county for county and/or state purposes, and which the board of county commissioners has ordered and directed to be repaid within the preceding twelve months, including legal interest, together with the additional amounts hereinafter provided for;

(2) A levy upon all of the taxable property of each taxing district within the county for the amount of all taxes collected by the county for the purposes of the various taxing districts in such county, which the board of county commissioners has ordered and directed to be repaid within the preceding twelve months, including legal interest, together with the additional amounts hereinafter provided for.

The aforesaid levy or levies shall also include a proper share of the interest paid out of said fund during said twelve months upon warrants issued against said fund, plus an additional amount not to exceed ten percent of the total of the preceding items required to be included in such levy or levies as such levying officers shall deem necessary to meet the obligations of such fund, taking into consideration the probable portions of such taxes that will not be collected or collectible during the year in which they are due and payable, and also any unobligated cash on hand in said fund. [1961 c 15 § 84.24.070. Prior: 1931 c 106 § 7; RRS § 11307.]

Chapter 84.26 HISTORIC PROPERTY

Sections

84.26.010 Legislative findings.

84.26.020	Definitions.
84.26.030	Special valuation criteria.
84.26.040	Application—Fees.
84.26.050	Referral of application to local review board— Agreement—Approval or denial.
84.26.060	Notice to assessor of approval—Certification and filing—Notation of special valuation.
84.26.070	Valuation.
84.26.080	Duration of special valuation—Notice of disqualification.
84.26.090	Disqualification for valuation—Additional tax— Lien—Exceptions from additional tax.
84.26.100	Payment of additional tax—Distribution.
84.26.110	Special valuation—Request for assistance from state historic preservation officer authorized.
84.26.120	Rules.
84.26.130	Appeals from decisions on applications.
84.26.140	Application for special valuation after December 31, 1991, prohibited.
84.26.900	Severability—1985 c 449.

84.26.010 Legislative findings. The legislature finds and declares that it is in the public interest of the people of the state of Washington to encourage maintenance, improvement, and preservation of privately owned historic landmarks as the state approaches its Centennial year of 1989. To achieve this purpose, this chapter provides special valuation for improvements to historic property. [1985 c 449 § 1.]

84.26.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Historic property" means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is:

(a) Listed in a local register of historic places created by comprehensive ordinance, certified by the secretary of the interior as provided in P.L. 96-515; or

(b) Listed in the national register of historic places.

(2) "Cost" means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

(3) "Special valuation" means the determination of the assessed value of the historic property subtracting, for up to ten years, such cost as is approved by the local review board.

(4) "State review board" means the advisory council on historic preservation established under chapter 27.34 RCW, or any successor agency designated by the state to act as the state historic preservation review board under federal law.

(5) "Local review board" means a local body designated by the local legislative authority.

(6) "Owner" means the owner of record.

(7) "Rehabilitation" is the process of returning a property to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its architectural and cultural values. [1986 c 221 § 1; 1985 c 449 § 2.]

84.26.030 Special valuation criteria. Four criteria must be met for special valuation under this chapter. The property must:

- (1) Be an historic property;
- (2) Fall within a class of historic property determined eligible for special valuation by the local legislative authority;
- (3) Be rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) within twenty-four months prior to the application for special valuation; and
- (4) Be protected by an agreement between the owner and the local review board as described in RCW 84.26.050(2). [1986 c 221 § 2; 1985 c 449 § 3.]

84.26.040 Application—Fees. An owner of property desiring special valuation under this chapter shall apply to the assessor of the county in which the property is located upon forms prescribed by the department of revenue and supplied by the county assessor. The application form shall include a statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for special valuation. Applications shall be made no later than October 1 of the calendar year preceding the first assessment year for which classification is requested. The assessor may charge only such fees as are necessary to process and record documents pursuant to this chapter. [1986 c 221 § 3; 1985 c 449 § 4.]

84.26.050 Referral of application to local review board—Agreement—Approval or denial. (1) Within ten days after the filing of the application in the county assessor's office, the county assessor shall refer each application for classification to the local review board.

(2) The review board shall approve the application if the property meets the criterion of RCW 84.26.030 and is not altered in a way which adversely affects those elements which qualify it as historically significant, and the owner enters into an agreement with the review board which requires the owner for the ten-year period of the classification to:

- (a) Monitor the property for its continued qualification for the special valuation;
- (b) Comply with rehabilitation plans and minimum standards of maintenance as defined in the agreement;
- (c) Make the historic aspects of the property accessible to public view one day a year, if the property is not visible from the public right of way;
- (d) Apply to the local review board for approval or denial of any demolition or alteration; and
- (e) Comply with any other provisions in the original agreement as may be appropriate.

(3) Once an agreement between an owner and a review board has become effective pursuant to this chapter, there shall be no changes in standards of maintenance, public access, alteration, or report requirements, or any other provisions of the agreement, during the period of the classification without the approval of all parties to the agreement.

(4) An application for classification as an eligible historic property shall be approved or denied by the local

review board before December 31 of the calendar year in which the application is made.

(5) The local review board is authorized to examine the records of applicants. [1986 c 221 § 4; 1985 c 449 § 5.]

84.26.060 Notice to assessor of approval—Certification and filing—Notation of special valuation. (1) The review board shall notify the county assessor and the applicant of the approval or denial of the application.

(2) If the local review board determines that the property qualifies as eligible historic property, the review board shall certify the fact in writing and shall file a copy of the certificate with the county assessor within ten days. The certificate shall state the facts upon which the approval is based.

(3) The assessor shall record the certificate with the county auditor.

(4) The assessor, as to any historic property, shall value the property under RCW 84.26.070 and, each year the historic property is classified and so valued, shall enter on the assessment list and tax roll that the property is being specially valued as historic property. [1985 c 449 § 6.]

84.26.070 Valuation. (1) The county assessor shall, for ten consecutive assessment years following the calendar year in which application is made, place a special valuation on property classified as eligible historic property.

(2) The entitlement of property to the special valuation provisions of this section shall be determined as of January 1. If property becomes disqualified for the special valuation for any reason, the property shall receive the special valuation for that part of any year during which it remained qualified or the owner was acting in the good faith belief that the property was qualified.

(3) At the conclusion of special valuation, the cost shall be considered as new construction. [1986 c 221 § 5; 1985 c 449 § 7.]

84.26.080 Duration of special valuation—Notice of disqualification. (1) When property has once been classified and valued as eligible historic property, it shall remain so classified and be granted the special valuation provided by RCW 84.26.070 for ten years or until the property is disqualified by:

- (a) Notice by the owner to the assessor to remove the special valuation;
- (b) Sale or transfer to an ownership making it exempt from property taxation; or
- (c) Removal of the special valuation by the assessor upon determination by the local review board that the property no longer qualifies as historic property or that the owner has failed to comply with the conditions established under RCW 84.26.050.

(2) The sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner does not disqualify the property from the special valuation provided by RCW 84.26.070 if:

(a) The property continues to qualify as historic property; and

(b) The new owner files a notice of compliance with the assessor of the county in which the property is located. Notice of compliance forms shall be prescribed by the state department of revenue and supplied by the county assessor. The notice shall contain a statement that the new owner is aware of the special valuation and of the potential tax liability involved when the property ceases to be valued as historic property under this chapter. The signed notice of compliance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120. If the notice of compliance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to RCW 84.26.090 shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of specially valued historic property for filing or recording unless the new owner has signed the notice of compliance or the additional tax has been paid.

(3) When the property ceases to qualify for the special valuation the owner shall immediately notify the state or local review board.

(4) Before the additional tax or penalty imposed by RCW 84.26.090 is levied, in the case of disqualification, the assessor shall notify the taxpayer by mail, return receipt requested, of the disqualification. [1986 c 221 § 6; 1985 c 449 § 8.]

84.26.090 Disqualification for valuation—Additional tax—Lien—Exceptions from additional tax.

(1) Except as provided in subsection (3) of this section, whenever property classified and valued as eligible historic property under RCW 84.26.070 becomes disqualified for the valuation, there shall be added to the tax an additional tax equal to:

(a) The cost multiplied by the levy rate in each year the property was subject to special valuation; plus

(b) Interest on the amounts of the additional tax at the statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the property had not been valued as historic property under this chapter; plus

(c) A penalty equal to twelve percent of the amount determined in (a) and (b) of this subsection.

(2) The additional tax and penalties, together with applicable interest thereon, shall become a lien on the property which shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the property may become charged or liable.

(3) The additional tax, interest, and penalty shall not be imposed if the disqualification resulted solely from:

(a) Sale or transfer of the property to an ownership making it exempt from taxation;

(b) Alteration or destruction through no fault of the owner; or

(c) A taking through the exercise of the power of eminent domain. [1986 c 221 § 7; 1985 c 449 § 9.]

84.26.100 Payment of additional tax—Distribution. The additional tax, penalties, and/or interest provided by RCW 84.26.090 shall be payable in full thirty days after the date which the treasurer's statement therefor is rendered. Such additional tax when collected shall be distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. [1985 c 449 § 10.]

84.26.110 Special valuation—Request for assistance from state historic preservation officer authorized. The local legislative authority and the local review board may request the assistance of the state historic preservation officer in conducting special valuation activities. [1985 c 449 § 11.]

84.26.120 Rules. The state review board shall adopt rules necessary to carry out the purposes of this chapter. The rules shall include rehabilitation and maintenance standards for historic properties to be used as minimum requirements by local review boards to ensure that the historic property is safe and habitable, including but not limited to:

(1) Elimination of visual blight due to past neglect of maintenance and repair to the exterior of the building, including replacement of broken or missing doors and windows, repair of deteriorated architectural features, and painting of exterior surfaces;

(2) Correction of structural defects and hazards;

(3) Protection from weather damage due to defective roofing, flashings, glazing, caulking, or lack of heat; and

(4) Elimination of any condition on the premises which could cause or augment fire or explosion. [1985 c 449 § 12.]

84.26.130 Appeals from decisions on applications. Any decision by a local review board on an application for classification as historic property eligible for special valuation may be appealed to superior court under RCW 34.04.130 in addition to any other remedy at law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization. [1985 c 449 § 13.]

84.26.140 Application for special valuation after December 31, 1991, prohibited. No application for special valuation under this chapter may be made after December 31, 1991. [1985 c 449 § 14.]

84.26.900 Severability—1985 c 449. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 449 § 15.]

**Chapter 84.28
REFORESTATION LANDS**

Sections
84.28.005 Purpose.

84.28.006	Definitions.
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84.28.005 Purpose. Public welfare demands that steps be taken to encourage reforestation and to protect and promote the growth of new forests on lands chiefly valuable for that purpose in order that they may be restored to the economic and industrial life of the state. To accomplish that end it is necessary that a system of taxation and assessment be devised for such lands, which will encourage the growth of new and immature forests on lands chiefly valuable for that purpose, and which will enable the owners thereof to bear the burden of taxation on such lands over the period of years necessary to produce forests of commercial value. Therefore, the state of Washington, through its legislature, hereby exercising its police and sovereign power, declares and enacts that all logged-off or selectively harvested lands and all unforested lands chiefly valuable for the production and growth of forests and all lands growing immature forests and forests of no commercial value shall not be assessed or taxed at a rate which will discourage or hamper the growth of forests on such lands, but shall be assessed and taxed at such rate and in such manner that owners of such lands may be encouraged to reforest, protect and grow forests of commercial value on such lands. [1963 c 214 § 1; 1961 c 15 § 84.28.005. Prior: 1931 c 40 § 1; RRS § 11219-1.]

84.28.006 Definitions. For the purposes of this chapter:

(1) "Department" shall mean the state department of natural resources;

(2) The term selectively harvested lands as used in this chapter shall mean lands devoted to reforestation as set forth and defined in Article 7, section 1 of the Constitution of the state of Washington, as amended. [1975 1st ex.s. c 278 § 188; 1963 c 214 § 2.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.010 Lands to be classified. All lands lying west of the summit of the Cascade range of mountains which are unforested or upon which the forest crop is not mature in merchantable quantities and which by reason of location, topography and geological formation are chiefly valuable for the purpose of developing and growing forests may be classified as reforestation lands as hereinafter provided, and shall thereupon be taxed and assessed as in this chapter provided, and not otherwise.

All lands lying east of the summit of the Cascade range of mountains which by reason of location, topography and geological formation are chiefly valuable for and devoted to the growing of forests may be classified as reforestation lands as hereinafter provided and shall thereupon be taxed and assessed as in this chapter provided, and not otherwise, and such lands may include lands upon which a present forest crop is being grown, which have been logged off in whole or selectively harvested leaving a residual stand and making provision for the continuous production of forest products consistent with sound forestry practices.

No land shall be classified as reforestation land hereunder which was valued and assessed for its forest growth on the 1930 tax rolls, without approval of the board of county commissioners of the county in which said land is located, or until after said lands have been cut over and the timber cut and removed in western Washington, or which have been logged off in whole or selectively harvested in eastern Washington as provided in the two preceding paragraphs set forth in this section. [1963 c 214 § 3; 1961 c 15 § 84.28.010. Prior: 1931 c 40 § 2; RRS § 11219-2.]

84.28.020 Classification procedure—Review by department of revenue. The owner of any lands eligible for classification under this chapter may apply in writing to the department of natural resources for the classification of any such lands as reforestation lands. The application shall contain a list of such lands by county, giving the legal description thereof by government legal subdivision, in tracts not smaller than a forty acre tract or government lot. At the time of filing the application with the department, the owner shall also file a copy thereof with the assessor of each county wherein such lands are situated along with a list of such lands described in the application. Within one hundred and twenty days following the filing of the application, a hearing on the proposed classification shall be held by the department at the court house in the county seat in each county of the state wherein any lands proposed for classification are situated. Notice of the hearing shall be given by the department by publication of a notice in at least two issues of a newspaper published and having general circulation in the county wherein such hearing is to be held. The notice shall specify the time, place and general purpose of the hearing and shall advise that a list of the lands proposed for classification as reforestation lands, with the legal description and the names of the owners,

has been filed with the county assessor. The last publication of such notice shall be at least fifteen days prior to the date fixed for the hearing. The department shall, on or before the date of the last publication of the notice, mail a copy thereof to the applicant, the county commissioners and the county assessor. At the hearing, the department shall hear objections to, and arguments for and against the proposed classification as to all, or any particular lands described on the list. Following the hearing the department shall reconsider the proposed list and classification and shall strike from the list any lands it determines are not suitable as reforestation lands and shall forward a list of such rejected lands to the land owner. The department shall, within thirty days following the conclusion of the hearing, file with the state department of revenue and forward to the land owner and assessor a list of the lands by the respective counties determined by it to be qualified for classification as reforestation lands, with description by government legal subdivisions, and names and addresses of respective owners.

The department of revenue shall hold said list for a period of two weeks, during which time any taxpayer, or the county assessor, of the county in which the lands are located shall be entitled to file written objections with it to the classification as reforestation lands of any particular lands on such list. If any objection is filed the department of revenue shall within thirty days after the receipt of the objection fix a date and hold a hearing thereon, and shall in writing notify the objector, the department, the assessor and the owner of the lands of the date fixed for the hearing and send a copy of the written objections to the department, land owner and assessor. At the hearing the department of revenue shall hear and consider evidence offered by the department, owner, assessor or objector as to the nature and character of such lands, and from such evidence shall determine whether the lands shall be classified as reforestation lands; and if the department of revenue determines that the lands are not suitable for reforestation and should not be classified as reforestation lands, it shall cause such lands to be stricken from the list. If no objections are filed to the classification of any lands on such list or if objections are filed and after hearing are overruled, the department of revenue shall forthwith enter an order approving the list as filed; and if, following a hearing on objections to classification as to any particular lands on the list, the department of revenue determines that the particular lands are not properly classified as reforestation lands, it shall within thirty days after the close of the hearing enter an order to that effect and shall strike such lands from the list, and enter an order approving the list with such lands stricken therefrom. Upon entry of the order the department of revenue shall, within a period of ten days, at its expense, cause a certified copy thereof, together with the approved list to be recorded in the office of the auditor of the county in which the lands are situated, and shall forward one certified copy thereof, together with the approved list, to the assessor of the county wherein the lands are situated, one copy to the department, and one copy of its order to the owner, with

a list only of lands in which he has an interest; and thereupon the lands described on such list shall be classified as reforestation lands. [1975 1st ex.s. c 278 § 189; 1963 c 214 § 4; 1961 c 15 § 84.28.020. Prior: 1951 c 172 § 1; 1931 c 40 § 3; RRS § 11219-3. Formerly RCW 84.28.020, 84.28.030 and 84.28.040.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.050 Removal from classification—Petition of department or county assessor—Hearing. Whenever the department or county assessor of the county in which classified lands are situated believes that any lands classified as reforestation lands are not being protected as provided by law, or the lands become more valuable for some other purpose, or are not being used primarily for forest crop production, the department or county assessor may petition the department of revenue to remove such lands from classification as reforestation lands. The petition shall describe the lands by government legal subdivisions and shall set forth the name of the owner thereof, and the grounds and reasons for which such removal is sought. The department of revenue shall within sixty days after filing of the petition fix a time and place and shall hold a hearing on the petition and shall mail a copy of the notice thereof, together with a copy of the petition, to the owner at his address as shown by the records of the county treasurer's office at least thirty days prior to the date set for the hearing. At the time and place fixed for the hearing the department of revenue shall hold a hearing on the petition and shall receive evidence offered by the owner, the department or county assessor for and against the petition. Upon the conclusion of the hearing the department of revenue shall within fifteen days thereafter determine whether such lands shall be removed from classification as reforestation lands, and shall enter an order accordingly. Within ten days after issuance of the order, one certified copy of such order shall be forwarded by the department of revenue to the county assessor of the county in which the lands are situated, one to the owner and one to the department, and the department of revenue shall, at its own expense, cause a certified copy of such order, together with a list of the lands covered thereby, to be recorded in the office of the auditor of the county in which the lands are situated. [1975 1st ex.s. c 278 § 190; 1963 c 214 § 5; 1961 c 15 § 84.28.050. Prior: 1951 c 172 § 2; 1931 c 40 § 4; RRS § 11219-4. Formerly RCW 84.28-.050 and 84.28.070.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.060 Removal from classification—Petition of taxpayers—Hearing. Whenever any lands previously classified as reforestation lands shall be or become more valuable for some other purpose and twenty-five taxpayers of the county in which the lands are situated file a petition with the department of revenue, alleging such to be the case, the department of revenue shall fix a date for hearing on the petition and shall in writing notify the taxpayers by mailing notice thereof directed to

the taxpayers at the address shown on the petition; and shall likewise, at least thirty days prior to the hearing date, notify the department, the assessor and the owners of the lands involved, by mailing a notice of the hearing with a copy of the petition to them directed to their respective addresses. At the hearing the petitioners, the department, the assessor and the owners shall be entitled to offer evidence bearing upon the question of the value of such lands for reforestation and other purposes. The department of revenue from the evidence shall determine whether the lands are more valuable for some other purpose than for reforestation; and if it so determines it shall enter an order to that effect and thereupon the lands shall be removed from classification as reforestation lands. Upon entry of an order by the department of revenue, as provided for in this section, the department of revenue shall, at its own expense, cause a certified copy thereof, together with a list of the lands covered thereby, to be recorded in the office of the auditor of the county in which the lands are situated and a certified copy thereof shall also be mailed to the owner. [1975 1st ex.s. c 278 § 191; 1963 c 214 § 6; 1961 c 15 § 84.28.060. Prior: 1951 c 172 § 3; 1931 c 40 § 5; RRS § 11219-5.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.063 Removal from classification—Petition of owner. The owner may at any time cause any of his lands classified under this chapter to be removed from such classification by filing written notice to that effect with the county assessor of the county in which such lands are situate, which notice shall describe the lands to be removed, giving the legal description thereof by government legal subdivision. Copy of such notice shall also be filed with the department, the department of revenue and the county auditor of the county in which the lands are situated. Upon receipt from the county treasurer of evidence of payment of the yield taxes imposed by RCW 84.28.065, the department of revenue shall issue an order removing said lands from classification, and such lands shall thereby be removed from classification as reforestation lands as of the first day of January next following the date of issuance of such order, and shall cease to be assessed and taxed as such and shall be free from any lien for unpaid taxes due or assessable under this chapter except as provided in RCW 84.28.065. [1975 1st ex.s. c 278 § 192; 1963 c 214 § 7.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.065 Taxation upon removal of land from classification—Effective date of classification and removal orders. Whenever any land is removed from classification as reforestation land it shall thereafter be assessed and taxed without regard to the provisions of this chapter, and there shall thereupon become due and owing to the county in which such land is situated the taxes set forth in this section.

(a) A yield tax equal to twelve and one-half percent of the value of the timber or forest crop remaining on

the land, based upon full current stumpage rates fixed by the assessor: *Provided*, That whenever, within a period of twelve years following the classification of any lands as reforestation lands, any such lands shall be removed from classification, the owner thereof shall be required to pay a yield tax upon the timber of one percent for each year that has expired from the date of such classification until such removal from classification.

(b) A sum of money equivalent to the amount, if any, by which the tax paid on the land and forest crop because of classification under this chapter is less than the tax paid during the same period on similar land and forest crop that was not classified.

The assessor shall prepare a roll of lands to be removed from classification and shall extend against such lands the taxes computed as provided in this section, and shall forthwith transmit to the county treasurer a record of such taxes; and the county treasurer shall thereupon enter the amount of such taxes upon his records against such lands and their owner; and such taxes shall thereupon become a lien against such lands and timber and also against any forest material that may be cut thereon and against any other real or personal property owned by such owner. Such taxes shall become delinquent on the fifteenth day of March next following the effective date of the order of the department of revenue. The lien of such taxes shall be superior, and shall be enforceable, in the same manner and to the same effect as provided in RCW 84.28.140 for collection of yield taxes on materials removed from classified lands: *Provided*, That payment of such taxes shall be a condition precedent to issuance of an order removing lands from classification pursuant to provisions of RCW 84.28.063: *Provided further*, That an order classifying lands or removing lands from classification shall not be retroactive, but the effective date of such order shall not be earlier than the first day of January next following the date of issuance of such order. [1975 1st ex.s. c 278 § 193; 1963 c 214 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.080 Court review. Whenever the department or the department of revenue shall enter an order or decision with respect to classification or declassification of forest lands under this chapter, the owner of such lands, the department, the county assessor of the county in which such lands are located, or the taxpayers in a case arising under RCW 84.28.060, may, within thirty days following the entry of such order or decision, appeal to the superior court of the county within which such lands are situated for a review of the order or decision of the department or of the department of revenue. The appeal shall be perfected in the same manner as is provided by law for appeals from decisions of the department of revenue. Upon such appeal, the superior court shall sit without a jury, shall receive evidence de novo and shall determine the correct classification of the lands involved in accordance with the requirements of this chapter. The decision of the superior court shall be subject to appeal and review in the supreme court or the court of appeals

in the same manner and by the same procedure as appeals are taken and perfected in civil actions at law. Upon appeal from any order or decisions of the department or the department of revenue and pending the dismissal or final determination of such appeal, the lands involved shall be assessed and taxed in the same manner as they were assessed and taxed prior to the effective date of such order or decision. [1971 c 81 § 152; 1963 c 214 § 9; 1961 c 15 § 84.28.080. Prior: 1931 c 40 § 6; RRS § 11219-6.]

84.28.090 Basis of assessment prescribed. All lands classified as reforestation lands as provided in this chapter and lying west of the summit of the Cascade range of mountains in the state of Washington shall, after the date of such classification, be assessed for purposes of taxation at sixteen dollars per acre, which is hereby declared to be the assessed value thereof; and all lands so classified lying east of the summit of the Cascade range of mountains shall be assessed for purposes of taxation at eight dollars per acre, which is hereby declared to be the assessed value thereof. The above values shall apply as the actual basis for taxation of such lands, without regard to any percentages of value which may apply for taxation of other classes of property; and the taxation of such lands on the basis herein provided shall be separate and distinct from and in addition to the cost of protecting such lands from fire as provided under the laws of Washington. [1973 1st ex.s. c 195 § 89; 1971 ex.s. c 299 § 33; 1963 c 214 § 10; 1961 c 15 § 84.28.090. Prior: 1931 c 40 § 7; RRS § 11219-7.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Effective date—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

84.28.095 Tax on unclassified lands. Any lands not classified as reforestation lands, shall be assessed and taxed under the general taxation laws and not under the provisions of this chapter. [1961 c 15 § 84.28.095. Prior: 1931 c 40 § 8; RRS § 11219-8.]

84.28.100 Permit to remove forest crop—Estimated stumpage rates—Bond or deposit. The owner or owners of lands classified and taxed as reforestation lands under this chapter, desiring to harvest any forest crop, or to remove or cause to be removed any forest growth therefrom shall in writing notify the county assessor of the county in which the lands are situated of such desire. The county assessor shall thereupon issue a permit authorizing the cutting and removal of such forest crop. The permit shall describe by legal subdivisions, or fractions thereof, areas on which cutting will be permitted. The permit shall expire at the end of each calendar year but shall be renewed for another year upon written application of the owner. The county assessor shall upon issuance of each original or renewal cutting permit estimate the stumpage rates upon the timber or forest crops to be harvested thereunder and shall forward a copy of the estimated stumpage rates along with the cutting permit to the permittee. Before any forest

growth is cut or removed from such lands the permittee shall file with the county treasurer of the county in which such lands are situated a good and sufficient surety company bond payable to the county in form prescribed by the county prosecuting attorney, and which before filing shall be approved by the judge of the superior court of such county, or make a cash deposit with such treasurer, in lieu of such bond, in such amount as the county assessor shall fix, the bond to be conditioned to pay to the county in question the yield tax to which the county will be entitled upon the cutting of the forest growth from such lands. In case a cash deposit is made in lieu of the bond the same shall be applied in payment of the yield tax provided in RCW 84.28.110, but such deposit shall not relieve an owner from payment of any additional amounts due for said yield tax nor of right of refund of any sum deposited in excess of the amount due on said tax. In event collection is made on the bond, either with or without suit, the amount collected shall be applied in payment of the yield tax due. [1963 c 214 § 11; 1961 c 15 § 84.28.100. Prior: 1931 c 40 § 9; RRS § 11219-9.]

84.28.110 Report of cutting—Yield tax—Rates—Actions to recover tax. Whenever the whole or any part of the forest crop shall be cut upon any lands classified and assessed as reforestation lands under the provisions of this chapter, the owner of such lands shall, on or before the fifteenth day of February of each year, report under oath to the assessor of the county in which such lands are located, the amount of such timber or other forest crop cut during the preceding twelve months, in units of measure in conformity with the usage for which the cutting was made, together with a description, by government legal subdivisions, of the lands upon which the same were cut. If no such report of cutting is made, or if the assessor shall believe the report to be inaccurate, incorrect or mistaken, the assessor may by such methods as shall be deemed advisable, determine the amount of timber or other forest product cut during such period. As soon as the report is filed, if the assessor is satisfied with the accuracy of the report, or if dissatisfied, as soon as the assessor shall have determined the amount of timber or forest crop cut as herein provided, the assessor shall determine the full current stumpage rates for the timber or forest crop cut and shall thereupon compute, and there shall become due and payable from the owner, a yield tax equal to twelve and one-half percent of the market value of the timber or forest crop so cut, based upon the full current stumpage rates so fixed by the assessor: *Provided*, Whenever within the period of twelve years following the classification of any lands as reforestation lands, any forest material shall be cut on such lands, the owner thereof shall be required to pay a yield tax of one percent for each year that has expired from the date of such classification until such cutting: *Provided, further*, That no yield tax need be paid on any forest material cut for domestic use of the owner of such lands, or on materials necessarily used in harvesting the forest crop.

Whenever the owner is dissatisfied with the determination of the amount cut as made by the assessor, or with the full current stumpage rates as fixed by the assessor, and shall pay the tax based thereon under protest, such owner may maintain an action in the superior court of the county in which the lands are located for recovery of the amount of the tax paid in excess of what the owner alleges the tax would be if based upon a cutting or stumpage rate which the owner alleges to be correct. In any such action the county involved and the county assessor of the county, shall be joined as parties defendant, but in case a recovery is allowed, judgment shall be entered against the county only, to be charged against the funds to which the collected tax was paid. In such action the court shall determine, in accordance with the issues, the true and correct amount of timber and forest crop which has been cut, and if an issue in the case, the true and correct full current stumpage rates, and shall enter judgment accordingly, either dismissing the action, or allowing recovery based upon its determination of the amount of timber or forest crop cut and if in issue, the full current stumpage rate. The judgment of the superior court shall be subject to appeal to the supreme court or the court of appeals in the same manner and by the same procedure as appeals are taken and perfected in civil actions at law. [1971 c 81 § 153; 1963 c 214 § 12; 1961 c 15 § 84.28.110. Prior: 1939 c 206 § 33; 1931 c 40 § 10; RRS § 11219-10. Formerly RCW 84.28.110 and 84.28.120.]

84.28.140 Collection of yield tax—Delinquency—Lien. Upon receipt of a report of cutting or upon determination of the amount cut as provided in this chapter the county assessor shall assess and tax against the owner of such lands the amount of yield tax due on account of such cutting; and shall forthwith transmit to the county treasurer a record of such tax; and the county treasurer shall thereupon enter the amount of such yield tax on his records against such lands and their owner; and such yield tax shall thereupon become a lien against such lands and also against the forest material cut thereon and against any other real or personal property owned by such owner, which shall become delinquent unless paid on or before the fifteenth day of March following the date when such report is made, or should have been made. The lien of such tax shall be superior and paramount to all other liens, taxes, assessments and encumbrances, and if not paid before the same becomes delinquent, may be collected by seizure and sale of such forest material, or any other personal property of such owner, in the same manner as personal property is seized and sold for delinquent taxes under the general tax laws; and the lien of said tax against the lands from which such forest materials are cut, or any other real property of such owner, may be foreclosed and said lands sold, in the same manner as liens for taxes are foreclosed and land sold for delinquent taxes under the general tax laws of the state. Said tax, if not otherwise collected, may be collected by means of an action instituted in the superior court of the county in which are situated the lands from which such forest materials are cut, against such owner

by the prosecuting attorney in behalf of the county, in which the lands are situated from which such forest materials are cut. Any person, firm, or corporation buying any forest material on which the yield tax herein provided has not been paid shall be liable for the payment of said tax and the amount thereof may be collected from such person, firm or corporation by seizure and sale of any real or personal property belonging to such person, firm or corporation in the same manner in which real or personal property, respectively is seized and sold for delinquent taxes under the general tax laws of the state; and said tax, if not otherwise collected, may be collected by means of an action instituted in the superior court of the county in which are situated the lands from which such forest materials are cut, against such person, firm or corporation, by the prosecuting attorney in behalf of the county in which the lands are situated from which such forest materials are cut. All taxes collected under the provisions of this chapter shall be paid to the county treasurer of the county in which the lands are situated from which such forest materials are cut, and shall be paid into the same fund and distributed by the county treasurer in the same proportions as the general taxes on other property in the same taxing district are paid and distributed in the year in which such payment or collection is made. [1963 c 214 § 13; 1961 c 15 § 84.28.140. Prior: 1931 c 40 § 12; RRS § 11219-12.]

84.28.150 Reforestation land taxes exclusive—Exceptions. Any lands or forest materials assessed and taxed under the provisions of this chapter shall not be otherwise assessed and taxed under the laws of this state, but nothing contained in this chapter shall prevent the assessment and taxation under general tax laws of all buildings, improvements, agricultural, mineral or values other than forest values, upon any lands assessed and taxed under the provisions of this chapter, or the assessment and taxation of such lands for any benefits authorized by any local improvement laws of the state of Washington. [1961 c 15 § 84.28.150. Prior: 1931 c 40 § 13; RRS § 11219-13.]

84.28.160 Rules and regulations authorized. The department of natural resources and the department of revenue, respectively, shall have power to make such rules and regulations as they shall deem necessary or advisable in the exercise of the powers and performance of the duties imposed upon them by this chapter. [1975 1st ex.s. c 278 § 194; 1963 c 214 § 14; 1961 c 15 § 84.28.160. Prior: 1931 c 40 § 14; RRS § 11219-14.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.28.170 Penalty. Violation of any of the provisions of this chapter shall constitute a gross misdemeanor. [1961 c 15 § 84.28.170. Prior: 1931 c 40 § 15; RRS § 11219-15.]

84.28.200 Termination of classification under chapter 84.28 RCW—Reclassification under chapter 84.33 RCW. The classification of land as reforestation land

under this chapter is terminated, effective July 1, 1984. Effective July 1, 1984, this land shall be classified forest land under chapter 84.33 RCW and this land and the timber standing thereon shall be subject to all provisions of chapter 84.33 RCW. [1984 c 204 § 28.]

Findings—Purpose—1984 c 204 §§ 28–43: "The legislature finds that two separate systems are used in the taxation of forest land and the timber and forest crops grown thereon. Less than eight percent of private forest land is taxed under the system enacted in 1931; over ninety-two percent is taxed under the 1971 law. The policies established under RCW 84.28.005 in 1931 and RCW 84.33.010 in 1971 will be carried out more efficiently and equitably under a single uniform taxing system. It is the purpose of sections 28 through 43 of this act to phase out the system enacted in 1931 for taxation of forest land and forest crops and to integrate the taxation of that land and forest crops into the tax system enacted in 1971." [1984 c 204 § 27.]

Application—1984 c 204 §§ 28–43: "Nothing in sections 28 through 43 of this act excuses or discharges any person from the yield tax imposed by RCW 84.28.110 with respect to timber harvested from reforestation lands prior to July 1, 1984." [1984 c 204 § 45.] "Sections 28 through 43 of this act" consist of the enactment of RCW 84.28.200 through 84.28.215, 84.33.055, 84.33.056, 84.33.057, 84.33.058, 84.33.059, 84.33.061, 84.33.062, 84.33.063, 84.33.064, 84.33.065, 84.33.066, and 84.33.067.

84.28.205 "Reclassified reforestation land" defined. As used in this chapter, "reclassified reforestation land" means land for which the classification has terminated under RCW 84.28.200. [1984 c 204 § 29.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.28.210 Notice of reclassification—Application for declassification—Payment for declassification—Assessment upon declassification. The county assessor of a county in which there are reclassified reforestation lands shall notify each owner of record of reclassified reforestation land of the reclassification prior to August 1, 1984. If the owner desires to remove any such land from classification as reclassified reforestation land, the owner shall file an application for removal from classification of the land by legal description prior to October 1, 1984. The application for declassification shall be accompanied by a payment equal to six percent of the stumpage value of any commercial timber standing on the land as of July 1, 1984. The assessor shall accept the request for removal from classification but may ask for an appraisal of the standing timber certified by an experienced timber cruiser before final acceptance of the payment due. Upon final approval and payment of the proper amount, the assessor shall assess the land at its value for highest and best use as of January 1, 1985. [1984 c 204 § 30.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.28.215 Listing of reclassified reforestation lands—Manner and effect. In preparing the assessment rolls as of January 1, 1985, for taxes payable in 1986, the assessor shall list, prior to May 31, 1985, each parcel of reclassified reforestation land at the values set

in accordance with RCW 84.33.120. For the purpose of calculating the limitation on tax levies under chapter 84.55 RCW, the increase in assessed valuation of reclassified reforestation land entered on the tax rolls as of January 1, 1985, shall be treated the same as increases resulting from new construction. Reclassified reforestation land shall be considered to have been designated or classified forest land for a period in excess of ten years for purposes of calculating any compensating tax which may become payable under RCW 84.33.140. [1984 c 204 § 31.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

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Chapter 84.33

TIMBER AND FOREST LANDS

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84.33.010 Legislative findings. As a result of the study and analysis of systems of taxation of standing timber and forest lands by the forest tax committee pursuant to Senate Concurrent Resolution No. 30 of the 41st session of the legislature, and the recommendations of the committee based thereon, the legislature hereby finds that:

(1) The public welfare requires that this state's system for taxation of timber and forest lands be modernized to assure the citizens of this state and its future generations the advantages to be derived from the continuous production of timber and forest products from the significant area of privately owned forests in this state. It is this state's policy to encourage forestry and restocking and reforestation of such forests so that present and future generations will enjoy the benefits which forest areas provide in enhancing water supply, in minimizing soil erosion, storm and flood damage to persons or property, in providing a habitat for wild game, in providing scenic and recreational spaces, in maintaining land areas whose forests contribute to the natural ecological equilibrium,

and in providing employment and profits to its citizens and raw materials for products needed by everyone.

(2) The combination of variations in quantities, qualities and locations of timber and forest lands, the fact that market areas for timber products are nation-wide and world-wide and the unique long term nature of investment costs and risks associated with growing timber, all make exceedingly difficult the function of valuing and assessing timber and forest lands.

(3) The existing ad valorem property tax system is unsatisfactory for taxation of standing timber and forest land and will significantly frustrate, to an ever increasing degree with the passage of time, the perpetual enjoyment of the benefits enumerated above.

(4) For these reasons it is desirable, in exercise of the powers to promote the general welfare and to impose taxes; that

(a) the ad valorem system for taxing timber be modified and discontinued in stages over a three year period during which such system will be replaced by one under which timber will be taxed on the basis of stumpage value at the time of harvest, and

(b) forest land remain under the ad valorem taxation system but be taxed only as provided in this chapter and RCW 28A.41.130. [1984 c 204 § 16; 1971 ex.s. c 294 § 1.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.020 Classification of timberlands. Lands not heretofore so classified, which are primarily devoted to and used for growing and harvesting timber are hereby classified as lands devoted to reforestation and such lands and timber shall be taxed in accordance with the provisions of this chapter and RCW 28A.41.130. [1984 c 204 § 17; 1971 ex.s. c 294 § 2.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.035 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(2) "Forest land" means forest land which is classified or designated forest land under this chapter.

(3) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

(4) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber

for sale or for commercial or industrial use: *Provided*, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(5) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(6) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees.

(7) "Timber assessed value" for a county means a value, calculated by the department of revenue before October 1 of each year, equal to the total stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

(8) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated. [1986 c 315 § 1; 1984 c 204 § 1.]

Savings—1984 c 204: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1984 c 204 § 48.]

Effective date—1984 c 204: "This act shall take effect July 1, 1984." [1984 c 204 § 49.]

84.33.040 Timber on privately or federally owned land exempted from ad valorem taxation. Timber on privately owned land or federally owned land shall be exempt from ad valorem taxation. [1984 c 204 § 18; 1983 1st ex.s. c 62 § 7; 1971 ex.s. c 294 § 4.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

84.33.041 State excise tax on harvesters of timber imposed—Credit for county tax—Deposit of moneys in timber tax distribution account—Earnings. (1) An excise tax is imposed on every person engaging in this state in business as a harvester of timber on privately or publicly owned land. The tax is equal to the stumpage value of timber harvested for sale or for commercial or industrial use multiplied by the rate provided in this chapter.

(2) A credit is allowed against the tax imposed under this section for any tax paid under RCW 84.33.051.

(3) Moneys received as payment for the tax imposed under this section and RCW 84.33.051 shall be deposited in the timber tax distribution account hereby established in the state treasury.

(4) All earnings of investments of balances in the timber tax distribution account shall be credited to the general fund. [1985 c 57 § 87; 1984 c 204 § 2.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Use of collection agencies to collect taxes outside the state: RCW 82.32.265.

84.33.042 Excise tax rate July 1, 1984, through June 30, 1985. The rate of tax imposed under RCW 84.33-.041 for timber harvested July 1, 1984, through June 30, 1985, shall be six and one-half percent. [1984 c 204 § 3.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.043 Excise tax rate July 1, 1985, through June 30, 1986. The rate of tax imposed under RCW 84.33-.041 for timber harvested July 1, 1985, through June 30, 1986, shall be six and one-eighth percent. [1984 c 204 § 4.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.044 Excise tax rate July 1, 1986, through June 30, 1987. The rate of tax imposed under RCW 84.33-.041 for timber harvested July 1, 1986, through June 30, 1987, shall be five and three-fourths percent. [1984 c 204 § 5.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.045 Excise tax rate July 1, 1987, through June 30, 1988. The rate of tax imposed under RCW 84.33-.041 for timber harvested July 1, 1987, through June 30, 1988, shall be five and three-eighths percent. [1984 c 204 § 6.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.046 Excise tax rate July 1, 1988, and thereafter. The rate of tax imposed under RCW 84.33.041 for timber harvested July 1, 1988, and thereafter, shall be five percent. [1984 c 204 § 7.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.051 County excise tax on harvesters of timber authorized—Rate—Administration and collection—Deposit of moneys in timber tax distribution account—Use. (1) The legislative body of any county may impose a tax upon every person engaging in the county in business as a harvester effective October 1, 1984. The tax shall be equal to the stumpage value of timber harvested from privately owned land multiplied by a rate of four percent.

(2) Before the effective date of any ordinance imposing a tax under this section, the county shall contract with the department of revenue for administration and collection of the tax. The tax collected by the department of revenue under this section shall be deposited by the department in the timber tax distribution account. Moneys in the account may be spent only for distributions to counties under RCW 84.33.081 and, after appropriation by the legislature, for the activities undertaken by the department of revenue relating to the collection and administration of the taxes imposed under this section and RCW 84.33.041. Appropriations are not required for distributions to counties under RCW 84.33.081. [1984 c 204 § 8.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.055 Reclassified reforestation lands—Excise tax rate—Payment and distribution. There shall be paid by each owner of reclassified reforestation lands, as defined in RCW 84.28.205, in lieu of the excise tax rate imposed under RCW 84.33.041, a rate equal to twelve and one-half percent, minus the amounts specified in this chapter. Such tax shall be paid and distributed as follows:

(1) The amount of taxes payable equal to the amount of taxes which would be payable if the rate under this section equaled the rate imposed under RCW 84.33.041 shall be paid and distributed as provided in this chapter.

(2) The amount of taxes payable in excess of the amount of taxes which would be payable if the rate under this section equaled the rate imposed under RCW 84.33.041 shall be paid by the harvester to the department of revenue. The department of revenue shall distribute these receipts, less amounts appropriated for administration, on or before March 15 of the year following the harvest to the county treasurer of the county in which the timber was harvested. The county treasurer shall distribute these receipts to local taxing districts in the county in which the timber was harvested in the same manner as the distributions of tax receipts under chapter 84.28 RCW.

For timber harvested from reclassified reforestation lands, as defined in RCW 84.28.205, for the period July 1, 1984, through December 31, 1984, the tax shall be

paid prior to January 31, 1985, and such tax revenue shall be distributed to the state and local taxing districts in the same manner as if the timber were harvested after October 1, 1984. [1984 c 204 § 32.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.056 Reclassified reforestation lands—Excise tax rate reduction July 1, 1984, through December 31, 1984. For timber harvested July 1, 1984, through December 31, 1984, the rate provided in RCW 84.33.055 shall be reduced by one percent. [1984 c 204 § 33.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.057 Reclassified reforestation lands—Excise tax rate reduction for 1985. For timber harvested in 1985, the rate provided in RCW 84.33.055 shall be reduced by two percent. [1984 c 204 § 34.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.058 Reclassified reforestation lands—Excise tax rate reduction for 1986. For timber harvested in 1986, the rate provided in RCW 84.33.055 shall be reduced by three percent. [1984 c 204 § 35.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.059 Reclassified reforestation lands—Excise tax rate reduction for 1987. For timber harvested in 1987, the rate provided in RCW 84.33.055 shall be reduced by three and one-half percent. [1984 c 204 § 36.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.061 Reclassified reforestation lands—Excise tax rate reduction for 1988. For timber harvested in 1988, the rate provided in RCW 84.33.055 shall be reduced by four percent. [1984 c 204 § 37.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28-43: See notes following RCW 84.28.200.

84.33.062 Reclassified reforestation lands—Excise tax rate reduction for 1989. For timber harvested in 1989, the rate provided in RCW 84.33.055 shall be reduced by four and one-half percent. [1984 c 204 § 38.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.063 Reclassified reforestation lands—Excise tax rate reduction for 1990. For timber harvested in 1990, the rate provided in RCW 84.33.055 shall be reduced by five percent. [1984 c 204 § 39.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.064 Reclassified reforestation lands—Excise tax rate reduction for 1991. For timber harvested in 1991, the rate provided in RCW 84.33.055 shall be reduced by five and one-half percent. [1984 c 204 § 40.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.065 Reclassified reforestation lands—Excise tax rate reduction for 1992. For timber harvested in 1992, the rate provided in RCW 84.33.055 shall be reduced by six percent. [1984 c 204 § 41.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.066 Reclassified reforestation lands—Excise tax rate reduction for 1993. For timber harvested in 1993, the rate provided in RCW 84.33.055 shall be reduced by six and one-half percent. [1984 c 204 § 42.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.067 Reclassified reforestation lands—Excise tax rate reduction for 1994 and thereafter. For timber harvested in 1994, and thereafter, the rate provided in RCW 84.33.055 shall be reduced by seven and one-half percent. [1984 c 204 § 43.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Findings—Purpose—Application—1984 c 204 §§ 28–43: See notes following RCW 84.28.200.

84.33.073 Definitions. As used in RCW 84.33.073 and 84.33.074, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Small harvester" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding five hundred thousand board feet in a calendar quarter and not exceeding one million board feet in a calendar year: *Provided*, That whenever the United

States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include harvesters of Christmas trees.

(2) "Timber" means forest trees, standing or down, on privately or publicly owned land.

(3) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues but it does not include any other costs which are not directly and exclusively related to harvesting and marketing of the timber such as costs of permanent roads or costs of reforesting the land following harvest. [1987 c 166 § 2; 1986 c 315 § 2; 1982 2nd ex.s. c 4 § 3; 1981 c 146 § 1.]

Effective date—Applicability—1982 2nd ex.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982. This 1982 amendatory act shall not be construed to affect timber contracts in effect on the effective date of this 1982 amendatory act." [1982 2nd ex.s. c 4 § 4.]

Effective date—1981 c 146: "This act shall take effect January 1, 1982." [1981 c 146 § 3.]

Severability—1981 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 146 § 4.]

84.33.074 Excise tax on harvesters of timber—Calculation of tax by small harvesters—Election—Filing form. (1) A small harvester may elect to calculate the tax imposed by this chapter in the manner provided in this section.

(2) Timber shall be considered harvested at the time when in the ordinary course of business the quantity thereof by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

(3) Timber values shall be determined by either of the following methods, whichever is most appropriate to the circumstances of the harvest:

(a) When standing timber is sold on the stump, the taxable value is the actual gross receipts received by the landowner from the sale of the standing timber.

(b) When timber is sold after it has been harvested, the taxable value is the actual gross receipts from sale of the harvested timber minus the costs of harvesting and marketing the timber. When the taxpayer is unable to provide documented proof of harvesting and marketing costs, this deduction for harvesting and marketing costs

shall be a percentage of the gross receipts from sale of the harvested timber as determined by the department of revenue but in no case less than twenty-five percent.

(4) The department of revenue shall prescribe a short filing form which shall be as simple as possible. [1984 c 204 § 19; 1981 c 146 § 2.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Effective date—Severability—1981 c 146: See notes following RCW 84.33.073.

84.33.075 Excise tax on harvesters of timber—Exemption for certain nonprofit organizations, associations, or corporations. The excise tax imposed by this chapter shall not apply to any timber harvested by a nonprofit organization, association, or corporation from forest lands owned by it, where such lands are exempt from property taxes under RCW 84.36.030, and where all of the income and receipts of the nonprofit organization, association, or corporation derived from such timber sales are used solely for the expense of promoting, operating, and maintaining youth programs which are equally available to all, regardless of race, color, national origin, ancestry, or religious belief.

In order to determine whether the harvesting of timber by a nonprofit organization, association, or corporation is exempt, the director of the department of revenue shall have access to its books.

For the purposes of this section, a "nonprofit" organization, association, or corporation is one: (1) Which pays no part of its income directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws; and (2) which pays salary or compensation to its officers only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public services of the state. [1984 c 204 § 20; 1980 c 134 § 6.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.077 Credit for property taxes paid on timber on public land. The amount of any property taxes paid on timber standing on public land shall be allowed as a credit against any tax imposed with respect to the business of harvesting timber from publicly owned land under RCW 84.33.041. However, the amount of credit allowed shall not exceed the amount of excise tax due in respect to the business of harvesting timber from publicly owned land. [1984 c 204 § 21; 1983 1st ex.s. c 62 § 8.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

84.33.078 Sale of timber on nonfederally owned public land—Notice of sale or prospectus to indicate tax treatment. When any timber standing on public land, other than federally owned land, is sold separate from

the land, the department of natural resources or other governmental unit, as appropriate, shall state in its notice of the sale or prospectus that timber sold separate from the land is subject to property tax and that the amount of the tax paid may be used as a credit against any tax imposed with respect to business of harvesting timber from publicly owned land under RCW 84.33.041. [1986 c 65 § 1; 1984 c 204 § 22; 1983 1st ex.s. c 62 § 9.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

84.33.081 Distributions from timber tax distribution account—Distributions from county timber tax account. (1) On the last business day of the second month of each calendar quarter, the state treasurer shall distribute from the timber tax distribution account to each county the amount of tax collected on behalf of each county under RCW 84.33.051, less each county's proportionate share of appropriations for collection and administration activities under RCW 84.33.051, and shall transfer to the state general fund the amount of tax collected on behalf of the state under RCW 84.33.041, less the state's proportionate share of appropriations for collection and administration activities under RCW 84.33.041. The county treasurer shall deposit moneys received under this section in a county timber tax account which shall be established by each county. Following receipt of moneys under this section, the county treasurer shall make distributions from any moneys available in the county timber tax account to taxing districts in the county, except the state, under subsections (2) through (4) of this section.

(2) From moneys available, there first shall be a distribution to each taxing district having debt service payments due during the calendar year, based upon bonds issued under authority of a vote of the people conducted pursuant to RCW 84.52.056 and based upon excess levies for a capital project fund authorized pursuant to RCW 84.52.053, of an amount equal to the timber assessed value of the district multiplied by the tax rate levied for payment of the debt service and capital projects: *Provided*, That in respect to levies for a debt service or capital project fund authorized before July 1, 1984, the amount allocated shall not be less than an amount equal to the same percentage of such debt service or capital project fund represented by timber tax allocations to such payments in calendar year 1984. Distribution under this subsection (2) shall be used only for debt service and capital projects payments. The distribution under this subsection shall be made as follows: One-half of such amount shall be distributed in the first quarter of the year and one-half shall be distributed in the third quarter of the year.

(3) From the moneys remaining after the distributions under subsection (2) of this section, the county treasurer shall distribute to each school district an amount equal to one-half of the timber assessed value of the district or

eighty percent of the timber roll of such district in calendar year 1983 as determined under this chapter, whichever is greater, multiplied by the tax rate, if any, levied by the district under RCW 84.52.052 or 84.52.053 for purposes other than debt service payments and capital projects supported under subsection (2) of this section. The distribution under this subsection shall be made as follows: One-half of such amount shall be distributed in the first quarter of the year and one-half shall be distributed in the third quarter of the year.

(4) After the distributions directed under subsections (2) and (3) of this section, if any, each taxing district shall receive an amount equal to the timber assessed value of the district multiplied by the tax rate, if any, levied as a regular levy of the district or as a special levy not included in subsection (2) or (3) of this section.

(5) If there are insufficient moneys in the county timber tax account to make full distribution under subsection (4) of this section, the county treasurer shall multiply the amount to be distributed to each taxing district under that subsection by a fraction. The numerator of the fraction is the county timber tax account balance before making the distribution under that subsection. The denominator of the fraction is the account balance which would be required to make full distribution under that subsection.

(6) After making the distributions under subsections (2) through (4) of this section in the full amount indicated for the calendar year, the county treasurer shall place any excess revenue up to twenty percent of the total distributions made for the year under subsections (2) through (4) of this section in a reserve status until the beginning of the next calendar year. Any moneys remaining in the county timber tax account after this amount is placed in reserve shall be distributed to each taxing district in the county in the same proportions as the distributions made under subsection (4) of this section. [1985 c 184 § 1; 1984 c 204 § 9.]

Application—1985 c 184 § 1: "Section 1 of this act applies to distributions beginning in 1986, and thereafter." [1985 c 184 § 3.] "Section 1 of this act" is the 1985 c 184 amendment to RCW 84.33.081.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.086 Payment of tax. (1) The taxes imposed under this chapter shall be computed with respect to timber harvested each calendar quarter and shall be due and payable in quarterly installments. Remittance shall be made on or before the last day of the month next succeeding the end of the quarterly period in which the tax accrues. The taxpayer on or before such date shall make out a return, upon such forms and setting forth such information as the department of revenue may require, showing the amount of tax for which the taxpayer is liable for the preceding quarterly period and shall sign and transmit the same to the department of revenue, together with a remittance for the amount of tax.

(2) The taxes imposed by this chapter are in addition to any taxes imposed upon the same persons under chapter 82.04 RCW.

(3) Any harvester incurring less than fifty dollars tax liability under this section in any calendar quarter is excused from the payment of such tax, but may be required by the department of revenue to file a return even though no tax may be due. [1987 c 166 § 1; 1984 c 204 § 10.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.091 Tables of stumpage values—Revised tables—Legislative review—Appeal. (1) The department of revenue shall designate areas containing timber having similar growing, harvesting, and marketing conditions to be used as units for the preparation and application of stumpage values. Each year on or before December 31 for use the following January through June 30, and on or before June 30 for use the following July through December 31, the department shall prepare tables of stumpage values of each species or subclassification of timber within these units. The stumpage value shall be the amount that each such species or subclassification would sell for at a voluntary sale made in the ordinary course of business for purposes of immediate harvest. These stumpage values, expressed in terms of a dollar amount per thousand board feet or other unit measure, shall be determined in a manner which makes reasonable and adequate allowances for age, size, quality, costs of removal, accessibility to point of conversion, market conditions, and all other relevant factors from:

(a) Gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, and in similar quantities;

(b) Gross proceeds from sales of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest; or

(c) A combination of (a) and (b) of this subsection.

(2) Upon application from any person who plans to harvest damaged timber, the stumpage values for which have been materially reduced from the values shown in the applicable tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen cause, the department shall revise the stumpage value tables for any area in which such timber is located and shall specify any additional accounting or other requirements to be complied with in reporting and paying the tax.

(3) The preliminary area designations and stumpage value tables and any revisions thereof are subject to review by the ways and means committees of the house of representatives and senate prior to finalization. Tables of stumpage values shall be signed by the director or the director's designee and authenticated by the official seal of the department. A copy thereof shall be mailed to anyone who has submitted to the department a written request for a copy.

(4) On or before the sixtieth day after the date of final adoption of any stumpage value tables, any harvester may appeal to the board of tax appeals for a revision of stumpage values for an area determined pursuant to subsection (3) of this section. [1984 c 204 § 11.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.096 Application of excise taxes' administrative provisions and definitions. All sections of chapter 82.32 RCW, except RCW 82.32.045 and 82.32.270, apply to the taxes imposed under this chapter. [1984 c 204 § 13.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.100 Forest land valuation—Definitions. As used in RCW 84.33.110 through 84.33.140:

(1) "Forest land" is synonymous with timberland and means all land in any contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber and means the land only.

(2) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee. [1983 c 3 § 224; 1971 ex.s. c 294 § 10.]

84.33.110 Forest land valuation—Grading forest land—Classes. (1) Each assessor shall grade all forest land within the county with respect to general land quality classes of "good", "average", and "poor" and, within each quality class, with respect to accessibility and topography as "favorable", "average", "difficult", and "inoperable", in accordance with the rules promulgated by the department of revenue under chapter 34.04 RCW setting forth criteria and procedures for grading forest land. This subsection and rules promulgated thereunder shall not have any force or effect after December 31, 1981.

(2) The department of natural resources, in consultation with the department of revenue and other appropriate representatives of government agencies and landowners, shall design and implement a program to determine which privately owned land is forest land as defined by RCW 84.33.100 and as classified under chapter 84.28 RCW and to have such forest land graded by the department of natural resources in conformance with factors that may affect the nurture and continued production of forests at each site, such as but not limited to species variability, characteristics of forest soils, climate variability, topography and access. The program shall include field work to obtain data which are necessary or useful in determining such grades and identifying which land is devoted to or suitable for growing and harvesting timber. The program shall be completed by December 31, 1980. [1981 c 148 § 4; 1974 ex.s. c 187 § 4; 1971 ex.s. c 294 § 11.]

Purpose—1981 c 148: "(1) One of the purposes of this act is to establish the values for ad valorem tax purposes of bare forest land which is primarily devoted to and used for growing and harvesting timber without consideration of other potential uses of the land and to provide a procedure for adjusting the values in future years to reflect economic changes which may affect the value established in this act.

(2) Chapter 294, Laws of 1971 ex. sess., as originally enacted, required the department of revenue annually to analyze forest land transactions to ascertain the market value of bare forest land purchased and used exclusively for growing and harvesting timber. Most transactions involving forest land include mature and immature timber

with no segregation by the parties between the amounts paid for timber and bare land. The examination of these transactions by the department to ascertain the prices being paid for only the bare land has proven to be very difficult, time consuming, and subject to recurring legal challenge. Samples are small in relation to the total acreage of forest land involved and the administrative time and costs required for the annual analyses are excessive in relation to the changes from year to year which have been observed in the value of bare forest land. This act eliminates most of these administrative costs by establishing the current bare forest land values and by providing a procedure for periodic adjustment of the values which does not require continuing and costly analysis of the numerous forest land transactions throughout the state." [1981 c 148 § 11.]

Severability—1981 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 148 § 15.]

Effective dates—1981 c 148: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 14, 1981], except for section 13 of this act which shall take effect September 1, 1981." [1981 c 148 § 16.] "Section 13 of this act" is an amendment to 1980 c 154 § 14 (uncodified) and is noted following RCW 82.45.010.

Severability—1974 ex.s. c 187: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 187 § 20.]

84.33.112 Forest land valuation—Grading forest land—Completion date—Hearings. The department of natural resources shall complete the grading of forest land on or before July 1, 1980. Within three months after the grading has been completed in each county, the department shall hold a public hearing in such county at which the forest land grades shall be described and explained. A notice shall be published of such hearing in one or more newspapers of general circulation in the county where the hearing is to be held. The notice shall state the time, place and purpose of the hearing. At the hearing the department shall explain the grades it has established for forest land within the county and shall provide maps of the county on which the established forest land grades are set forth for inspection by the public. Copies of such maps shall be provided to any person upon payment of the reasonable cost of production thereof. [1974 ex.s. c 187 § 11.]

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.113 Forest land valuation—Grading forest land—Review of grades. Within sixty days following the hearing held pursuant to RCW 84.33.112, any owner of forest land may request a review by the department for the purpose of modifying the grades established for his land. The department shall conduct such review in the county where the land is located. The forest land owner shall have the right to reasonably present testimony and data in support of his contentions. Following such review, except as provided below in RCW 84.33.116 and 84.33.118, the decision of the department shall be final. [1974 ex.s. c 187 § 12.]

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.114 Forest land valuation—Grading forest land—Certification of grades to department of revenue by department of natural resources. Within three months following the hearing in each county held pursuant to RCW 84.33.112, the department of natural resources shall certify to the department of revenue the grades of all forest land in such county. If at that time the grade of any specific forest land is under review or has not been determined following such review, its grade shall be certified when the review is completed. If any privately owned land not initially determined to be forest land is determined to be forest land subsequent to 1980, the grade of such land shall be certified to the department of revenue promptly after such determination. [1974 ex.s. c 187 § 13.]

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.115 Forest land valuation—Grading forest land—Certification of grades to county assessors—Placement of forest land within land grades. (1) The department of revenue shall certify to each county assessor the grades established for forest land within each respective county with instructions for application of the land grades to the parcels of forest land within each county. The certification of land grades by the department of revenue shall occur within twelve months after receiving the certificate from the department of natural resources under RCW 84.33.114 or by March 31, 1982, whichever is earlier. Land grades certified to the department of revenue under RCW 84.33.114 for land which is not initially determined to be forest land but is determined to be forest land after 1980 shall be promptly certified to the appropriate county assessors.

(2) Upon receipt of the land grades certified to him by the department of revenue the assessor shall take such actions as are necessary to cause all acres of forest land within the county to be placed within the applicable land grades. [1981 c 148 § 5; 1974 ex.s. c 187 § 14.]

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.116 Forest land valuation—Grading forest land—Notice to owners of grades—Petition for correction of grade—Appeal. (1) On or before May 31, 1982, and on or before May 31 next succeeding the certification of forest land grades with respect to land determined to be forest land after 1980, the assessor shall mail a notice to each owner of forest land stating the number of acres of each grade of forest land included in any tax parcel to which the notice applies. Any such notice mailed prior to 1982 shall plainly advise the forest land owner that the grades established for his forest land will not be used as a basis for assessment of such forest land until the assessment year 1982 for taxes payable in 1983.

(2) In addition to any other remedies provided by law, any owner who feels aggrieved by the forest land grade

determined for any forest land owned by him may petition the county board of equalization for correction of such grade. The department of revenue shall appear before the board and defend the determination of such grade. The board shall have jurisdiction to review such petition and may grant or deny the relief requested. The decision of the board may be appealed to the board of tax appeals under RCW 84.08.130. [1981 c 148 § 6; 1974 ex.s. c 187 § 15.]

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.118 Forest land valuation—Grading forest land—Notice to owners of value established—Petitions for correction of value. (1) On or before May 31, 1981 each county assessor shall mail notice to each owner of forest land within his county stating the number of acres of each grade of forest land included in any tax parcel to which the notice applies and the value established for each forest land grade and the total value of such tax parcel on which the assessment of such parcel is based.

(2) In addition to any other remedies provided by law, any owner who feels aggrieved by the valuation of any tax parcel owned by him may petition the county board of equalization for correction of such value. The board shall have jurisdiction to review such petitions and may grant or deny the requested relief. [1974 ex.s. c 187 § 17.]

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.120 Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax. (1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he applies generally in computing the assessed value of other property in his county. Values for the several grades of bare forest land shall be as follows.

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$141
	2	136
	3	131
	4	95
2	1	118
	2	114
	3	110
	4	80

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
3	1	93
	2	90
	3	87
	4	66
4	1	70
	2	68
	3	66
	4	52
5	1	51
	2	48
	3	46
	4	31
6	1	26
	2	25
	3	25
	4	23
7	1	12
	2	12
	3	11
	4	11
8		1

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.04 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed

under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him by the department of revenue, and he shall compute the assessed value of such land by using the same assessment ratio he applies generally in computing the assessed value of other property in his county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment year or earlier shall continue to be so assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

(a) Receipt of notice from the owner to remove such land from classification as forest land;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber;

(d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;

(e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120, as now or hereafter amended. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to subsections (c) or (d) above prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of subsection (a), (b), (d), or (e) above shall apply only to the land affected, and upon occurrence of subsection (c) shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: *Provided*, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsections (5)(e) and (9) of this section and unless the assessor shall not have mailed notice of classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to:

(a) The difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land;

(d) A donation of development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections or the sale or transfer of fee title to a governmental entity or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: *Provided*, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner.

(10) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land. [1986 c 238 § 1; 1984 c 204 § 23; 1981 c 148 § 7; 1980 c 134 § 2; 1974 ex.s. c 187 § 5; 1972 ex.s. c 148 § 5; 1971 ex.s. c 294 § 12.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.130 Forest land valuation—Application by owner that land be designated and valued as forest land—Hearing—Denial of application—Appeal.

(1) An owner of land desiring that it be designated as forest land and valued pursuant to RCW 84.33.120 as of January 1 of any year commencing with 1972 shall make application to the county assessor before such January 1.

(2) The application shall be made upon forms prepared by the department of revenue and supplied by the county assessor, and shall include the following:

(a) A legal description of or assessor's tax lot numbers for all land the applicant desires to be designated as forest land;

(b) The date or dates of acquisition of such land;

(c) A brief description of the timber on such land, or if the timber has been harvested, the owner's plan for restocking;

(d) Whether there is a forest management plan for such land;

(e) If so, the nature and extent of implementation of such plan;

(f) Whether such land is used for grazing;

(g) Whether such land has been subdivided or a plat filed with respect thereto;

(h) Whether such land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder;

(i) Whether such land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

(j) Whether such land is subject to a lease, option or other right which permits it to be used for any purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when such land ceases to be designated as forest land;

(n) An affirmation that the statements contained in the application are true and that the land described in the application is, by itself or with other forest land not included in the application, in contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber.

The assessor shall afford the applicant an opportunity to be heard if the application so requests.

(3) The assessor shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain either a "merchantable stand of timber" or an "adequate stocking" as defined in *RCW 76.08.010, or any laws or regulations adopted to replace such minimum standards, except this reason (a) shall not alone be sufficient for denial of the application (i) if such land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or such longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within such land do not meet such minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;

(b) The applicant, with respect to such land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder;

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling such ordinary high tide line and two hundred feet horizontally landward therefrom, except that if the higher and better use determined by the assessor to exist for such land would not be permitted or economically feasible by virtue of any federal, state or local law or regulation such land shall be assessed and valued pursuant to the procedures set forth in RCW 84.33.110 and RCW 84.33.120 without being designated. The application shall be deemed to have been approved unless, prior to May 1, of the year after such application was mailed or delivered to the assessor, he shall notify the applicant in writing of the extent to which the application is denied.

(4) An owner who receives notice pursuant to subsection (3) of this section that his application has been denied may appeal such denial to the county board of equalization. [1986 c 100 § 57; 1981 c 148 § 8; 1974 ex.s. c 187 § 6; 1971 ex.s. c 294 § 13.]

***Reviser's note:** RCW 76.08.010 was repealed by 1974 ex.s. c 137 § 34. See RCW 76.09.915.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.

(1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120, as now or hereafter amended. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that (i) such land is no longer primarily devoted to and used for growing and harvesting timber, (ii) such owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder, or (iii) restocking has not occurred to the extent or within the time specified in the application for designation of such land.

Removal of designation upon occurrence of any of subsections (a) through (c) above shall apply only to the land affected, and upon occurrence of subsection (d) shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for designation: *Provided*, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as

provided in subsection (5) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to:

(a) The difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land;

(d) A donation of development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections or the sale or transfer of fee title to a governmental entity or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: *Provided*, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (3) of this section shall be imposed upon the current owner. [1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.33.145 Compensating tax—Deferral upon application for classification under RCW 84.34.020 (2) or (3)—Computation of tax. (1) If no later than thirty days after removal of classification or designation the owner applies for classification under RCW 84.34.020 (2) or (3), then the classified or designated forest land shall not be considered removed from classification or designation for purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until the application for current use classification under RCW 84.34.030 is denied or the property is removed from designation under RCW 84.34.108. Upon removal from designation under RCW 84.34.108, the amount of compensating tax due under this chapter shall be equal to:

(a) The difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land when removed from designation under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated under this chapter, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued classification or designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the necessary definitions of forest land under RCW 84.33.100. Nothing in this section affects the additional tax imposed under RCW 84.34.108. [1986 c 315 § 3.]

84.33.160 Classification under chapter 84.28 RCW. Land approved for classification pursuant to RCW 84.28.020 prior to May 21, 1971 under chapter 84.28 RCW as reforestation lands, and the timber on such lands, shall be assessed and taxed in accordance with the applicable provision of chapter 84.28 RCW and shall not be subject to this chapter and RCW 28A.41.130. However, after May 21, 1971, no additional land shall be classified under chapter 84.28 RCW. [1983 c 3 § 225; 1971 ex.s. c 294 § 16.]

Termination of classification under chapter 84.28 RCW—Reclassification under chapter 84.33 RCW: RCW 84.28.200.

84.33.170 Application of chapter to Christmas trees. Notwithstanding any provision of this chapter to the

contrary, this chapter shall not exempt from the ad valorem tax nor subject to the excise tax imposed by this chapter, Christmas trees which are grown on land which has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such Christmas trees, and such land on which such Christmas trees stand shall not be taxed as provided in RCW 84.33.100 through 84.33.140. [1984 c 204 § 24; 1983 c 3 § 226; 1971 ex.s. c 294 § 17.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.175 Application of tax—Sale of land to governmental agency with reservation of rights to timber—Conveyance by governmental agency of trees. The excise tax imposed under this chapter applies to forest trees harvested after April 4, 1986, from lands sold to any governmental agency by warranty deed or contract where the seller reserved to itself the right to take all merchantable timber for a specific period of years, or in perpetuity, and to forest trees harvested after April 4, 1986, that any governmental agency, by quit claim deed, as partial consideration for payment of the purchase price, conveyed for a specific period of years, or in perpetuity, all forest trees, standing, growing, or lying on the described land, to the taxpayer, regardless of the date on which the contract was entered. [1986 c 315 § 8.]

84.33.200 Legislative review of timber tax system—Joint timber tax advisory committee—Information and data to be furnished. (1) The legislature shall review the system of distribution and allocation of all timber excise tax revenues in January, 1975 and each year thereafter to provide a uniform and equitable distribution and allocation of such revenues to the state and local taxing districts.

(2) In order to allow legislative review of the rules and regulations to be adopted by the department of revenue establishing the stumpage values provided for in RCW 84.33.091, such rules and regulations shall be effective not less than sixty days after transmitting to the staffs of the senate and house ways and means committees (or their successor committees) the same proposed rules and regulations as shall have been previously filed with the office of the code reviser pursuant to RCW 34.04.025(1)(a).

(3) In the event that a permanent timber tax rate is not set in 1979, a joint timber tax advisory committee shall be established. The joint advisory committee shall be composed of members of the house of representatives and the senate and co-chaired by a member of the house revenue committee and a member of the senate ways and means committee. The joint advisory committee shall recommend a rate level and distribution system on or before the convening of the forty-seventh legislature.

(4) The department of revenue and the department of natural resources shall make available to the revenue committees of the senate and house of representatives of

the state legislature information and data, as it may be available, pertaining to the status of forest land grading throughout the state, the collection of timber excise tax revenues, the distribution and allocation of timber excise tax revenues to the state and local taxing districts, and any other information as may be necessary for the proper legislative review and implementation of the timber excise tax system, and in addition, the departments shall provide an annual report of such matters in January of each year to such committees. [1984 c 204 § 25; 1979 c 6 § 4; 1974 ex.s. c 187 § 9.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

Chapter 84.34

OPEN SPACE, AGRICULTURAL, AND TIMBER LANDS—CURRENT USE ASSESSMENT—CONSERVATION FUTURES

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84.34.010 Legislative declaration. The legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declares that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of this chapter so to provide. The legislature further declares its intent that farm and agricultural lands shall be valued on the basis of their value for use as authorized by section 11 of Article VII of the Constitution of the state of Washington. [1973 1st ex.s. c 212 § 1; 1970 ex.s. c 87 § 1.]

84.34.020 Definitions. As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, (iii) promote conservation of soils, wetlands, beaches or

tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) retain in its natural state tracts of land not less than five acres situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification.

(2) "Farm and agricultural land" means either (a) land in any contiguous ownership of twenty or more acres devoted primarily to the production of livestock or agricultural commodities for commercial purposes; (b) any parcel of land five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or (c) any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to the production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands".

(3) "Timber land" means land in any contiguous ownership of five or more acres which is devoted primarily to the growth and harvest of forest crops and which is not classified as reforestation land pursuant to chapter 84.28 RCW. Timber land means the land only.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the county assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous. [1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

84.34.030 Applications for current use classification—Forms—Fee—Times for making. An owner of agricultural land desiring current use classification under subsection (2) of RCW 84.34.020 shall make application to the county assessor upon forms prepared by the state department of revenue and supplied by the county assessor. An owner of open space or timber land desiring current use classification under subsections (1) and (3) of RCW 84.34.020 shall make application to the

county legislative authority upon forms prepared by the state department of revenue and supplied by the county assessor. The application shall be accompanied by a reasonable processing fee if such processing fee is established by the city or county legislative authority but that such fee may not exceed thirty dollars for each application: *Provided*, That if the application is not approved, then the application fee shall be returned to the applicant. Said application shall require only such information reasonably necessary to properly classify an area of land under *this 1973 amendatory act with a notarized verification of the truth thereof and shall include a statement that the applicant is aware of the potential tax liability involved when such land ceases to be designated as open space, farm and agricultural or timber land. Applications must be made during the calendar year preceding that in which such classification is to begin. The assessor shall make necessary information, including copies of this chapter and applicable regulations, readily available to interested parties, and shall render reasonable assistance to such parties upon request. [1973 1st ex.s. c 212 § 3; 1970 ex.s. c 87 § 3.]

***Reviser's note:** "This 1973 amendatory act" [1973 1st ex.s. c 212] consists of the enactment of RCW 84.34.035, 84.34.037, 84.34.065, 84.34.108, 84.34.111, 84.34.121, 84.34.131, 84.34.141, 84.34.145, 84.34.150, 84.34.155, 84.34.160, and 84.34.921; the amendments to RCW 84.34.010, 84.34.020, 84.34.030, 84.34.050, 84.34.060, 84.34.070 and 84.34.080 by 1973 1st ex.s. c 212; and the repeal of RCW 84.34.040, 84.34.110, 84.34.120, 84.34.130, and 84.34.140.

84.34.035 Applications for current use classification—Approval or denial—Appeal—Duties of assessor upon approval. The assessor shall act upon the application for current use classification of farm and agricultural lands under subsection (2) of RCW 84.34.020, with due regard to all relevant evidence. The application shall be deemed to have been approved unless, prior to the first day of May of the year after such application was mailed or delivered to the assessor, he shall notify the applicant in writing of the extent to which the application is denied. An owner who receives notice that his application has been denied may appeal such denial to the county legislative authority. Within ten days following approval of the application, the assessor shall submit notification of such approval to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

The assessor shall, as to any such land, make a notation each year on the assessment list and the tax roll of the assessed value of such land for the use for which it is classified in addition to the assessed value of such land were it not so classified.

The assessor shall also file notice of both such values with the county treasurer, who shall record such notice in the place and manner provided for recording delinquent taxes. [1973 1st ex.s. c 212 § 4.]

84.34.037 Applications for current use classification—To whom made—Factors—Review. Applications for classification under RCW 84.34.020 subsection (1) or (3) shall be made to the county legislative authority. An application made for classification

of land under RCW 84.34.020 subsection (1)(b), or (3) which is in an area subject to a comprehensive plan shall be acted upon in the same manner in which an amendment to the comprehensive plan is processed. Application made for classification of land which is in an area not subject to a comprehensive plan shall be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing: *Provided*, That applications for classification of land in an incorporated area shall be acted upon by a determining authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located.

In determining whether an application made for classification under RCW 84.34.020, subsection (1)(b), or (3) should be approved or disapproved, the granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject of application, and may consider whether or not preservation of current use of the land when balanced against the resulting revenue loss or tax shift from granting the application will (1) conserve or enhance natural, cultural, or scenic resources, (2) protect streams, stream corridors, wetlands, natural shorelines and aquifers, (3) protect soil resources and unique or critical wildlife and native plant habitat, (4) promote conservation principles by example or by offering educational opportunities, (5) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, (6) enhance recreation opportunities, (7) preserve historic and archaeological sites, (8) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property: *Provided*, That if a public benefit rating system is adopted under RCW 84.34.055, the county legislative authority shall rate property applying for classification under RCW 84.34.020(1)(b) according to the public benefit rating system in determining whether an application should be approved or disapproved, but when such a system is adopted, open space properties then classified under this chapter which do not qualify under the system shall not be removed from classification but may be rated according to the public benefit rating system: *Provided further*, That the granting authority may approve the application with respect to only part of the land which is the subject of the application: *And Provided further*, That if any part of the application is denied, the applicant may withdraw the entire application: *And provided further*, That the granting authority in approving in part or whole an application for land classified pursuant to RCW 84.34.020(1) or (3) may also require that certain conditions be met, including but not limited to the granting of easements: *And provided further*, That the granting or denial of the application for current use classification is a legislative determination and shall be reviewable only for arbitrary and capricious actions. The granting authority may not require the granting of easements for land classified pursuant to RCW

84.34.020(3). [1985 c 393 § 1; 1984 c 111 § 1; 1973 1st ex.s. c 212 § 5.]

84.34.050 Notice of approval or disapproval—Procedure when approval granted. (1) The granting authority shall immediately notify the county assessor and the applicant of its approval or disapproval which shall in no event be more than six months from the receipt of said application. No land other than farm and agricultural land shall be considered qualified under this chapter until an application in regard thereto has been approved by the appropriate legislative authority.

(2) When the granting authority finds that land qualifies under this chapter, it shall file notice of the same with the assessor within ten days. The assessor shall, as to any such land, make a notation each year on the assessment list and the tax roll of the assessed value of such land for the use for which it is classified in addition to the assessed value of such land were it not so classified.

(3) Within ten days following receipt of the notice from the granting authority that such land qualifies under this chapter, the assessor shall submit such notice to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

(4) The assessor shall also file notice of both such value with the county treasurer, who shall record such notice in the place and manner provided for recording delinquent taxes. [1973 1st ex.s. c 212 § 6; 1970 ex.s. c 87 § 5.]

84.34.055 Open space priorities—Open space plan and public benefit rating system. (1) The county legislative authority may direct the county planning commission to set open space priorities and adopt, after a public hearing, an open space plan and public benefit rating system for the county. The plan shall consist of criteria for determining eligibility of lands, the process for establishing a public benefit rating system, and an assessed valuation schedule. The assessed valuation schedule shall be developed by the county assessor and shall be a percentage of market value based upon the public benefit rating system. The open space plan, the public benefit rating system, and the assessed valuations schedule shall not be effective until approved by the county legislative authority after at least one public hearing: *Provided*, That any county which has complied with the procedural requisites of *this act, prior to July 28, 1985, need not repeat those procedures in order to adopt an open space plan pursuant to *this act.

(2) In adopting an open space plan, recognized sources shall be used unless the county does its own survey of important open space priorities or features, or both. Recognized sources include but are not limited to the natural heritage data base; the state office of historic preservation; the interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features; state, national, county, or city registers of historic places; the shoreline master program; or studies by

the parks and recreation commission and by the departments of fisheries, **game, and natural resources. Features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency to be sent to the county legislative authority for final approval as open space.

(3) When the county open space plan is adopted, owners of open space lands then classified under this chapter shall be notified in the same manner as is provided in RCW 84.40.045 of their new assessed value. These lands may be removed from classification, upon request of owner, without penalty within thirty days of notification of value.

(4) The open space plan and public benefit rating system under this section may be adopted for taxes payable in 1986 and thereafter. [1985 c 393 § 3.]

Reviser's note: *(1) "This act" consists of the enactment of RCW 84.34.055 and 84.34.057 and the 1985 c 393 amendments to RCW 84.34.037 and 84.34.060.

***(2) References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

84.34.060 Determination of true and fair value of classified land—Computation of assessed value. In determining the true and fair value of open space land and timber land, which has been classified as such under the provisions of this chapter, the assessor shall consider only the use to which such property and improvements is currently applied and shall not consider potential uses of such property. The assessor shall compute the assessed value of such property by using the same assessment ratio which he applies generally in computing the assessed value of other property: *Provided*, That the assessed valuation of open space land with no current use shall not be less than that which would result if it were to be assessed for agricultural uses, except that the assessed valuation of open space land with no current use may be valued based on the public benefit rating system adopted under RCW 84.34.055: *Provided further*, That timber land shall be valued according to chapter 84.33 RCW. [1985 c 393 § 2; 1981 c 148 § 10; 1973 1st ex.s. c 212 § 7; 1970 ex.s. c 87 § 6.]

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

84.34.065 Determination of true and fair value of farm and agricultural land—Computation—Definitions. The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes.

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash or its equivalent,

for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing study within his office, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by the revenue department of the state of Washington, and such determination shall be published not later than January 1 of each year for use in that assessment year. The determination of the revenue department may be appealed to the state board of tax appeals by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a percentage equal to the estimated millage rate times the legal assessment ratio. [1973 1st ex.s. c 212 § 10.]

84.34.070 Withdrawal from classification. When land has once been classified under this chapter, it shall remain under such classification and shall not be applied to other use except a transfer between classifications under RCW 84.34.020 (2) and (3) for at least ten years from the date of classification and shall continue under such classification until and unless withdrawn from classification after notice of request for withdrawal shall be made by the owner. During any year after eight years of the initial ten-year classification period have elapsed, notice of request for withdrawal of all or a portion of the land, which shall be irrevocable, may be given by the owner to the county assessor or assessors of the county or counties in which such land is situated. In the event that a portion of a parcel is removed from classification, the remaining portion must meet the same requirements as did the entire parcel when such land was originally granted classification pursuant to this chapter. Within

seven days the county assessor shall transmit one copy of such notice to the legislative body which originally approved the application. The county assessor or assessors, as the case may be, shall, when two assessment years have elapsed following the date of receipt of such notice, withdraw such land from such classification and the land shall be subject to the additional tax due under RCW 84.34.108: *Provided*, That agreement to tax according to use shall not be considered to be a contract and can be abrogated at any time by the legislature in which event no additional tax or penalty shall be imposed. [1984 c 111 § 2; 1973 1st ex.s. c 212 § 8; 1970 ex.s. c 87 § 7.]

84.34.080 Change in use. When land which has been classified under this chapter as open space land, farm and agricultural land, or timber land is applied to some other use, except through compliance with RCW 84.34.070, or except as a result solely from any one of the conditions listed in RCW 84.34.108(5), the owner shall within sixty days notify the county assessor of such change in use and additional real property tax shall be imposed upon such land in an amount equal to the sum of the following:

(1) The total amount of the additional tax due under RCW 84.34.108; plus

(2) A penalty amounting to twenty percent of the amount determined in subsection (1) of this section. [1973 1st ex.s. c 212 § 9; 1970 ex.s. c 87 § 8.]

84.34.090 Extension of additional tax and penalties on tax roll—Lien. The additional tax and penalties, if any, provided by RCW 84.34.070 and 84.34.080 shall be extended on the tax roll and shall be, together with the interest thereon, a lien on the land to which such tax applies as of January 1st of the year for which such additional tax is imposed. Such lien shall have priority as provided in chapter 84.60 RCW: *Provided*, That for purposes of all periods of limitation of actions specified in Title 84 RCW, the year in which the tax became payable shall be as specified in RCW 84.34.100. [1970 ex.s. c 87 § 9.]

84.34.100 Payment of additional tax, penalties, and/or interest. The additional tax, penalties, and/or interest provided by RCW 84.34.070 and 84.34.080 shall be payable in full thirty days after the date which the treasurer's statement therefor is rendered. Such additional tax when collected shall be distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. [1980 c 134 § 4; 1970 ex.s. c 87 § 10.]

84.34.108 Removal of designation—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions. (1) When land has once been classified under this chapter, a notation of such designation shall be made each year upon the assessment and tax rolls and such land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of such designation;

(b) Sale or transfer to an ownership making all or a portion of such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of classification continuance. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120, as now or hereafter amended. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of such land is no longer primarily devoted to and used for the purposes under which it was granted classification.

(2) Within thirty days after such removal of all or a portion of such land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to full market value on the date of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (5) of this section, an additional tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of such an additional tax and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such additional tax shall be equal to:

(a) The difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified; plus

(b) Interest upon the amounts of such additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which such additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter.

(4) Additional tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from current use classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognition, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The additional tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of such land;

(f) Transfer to a church and such land would qualify for property tax exemption pursuant to RCW 84.36.020;

(g) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections: *Provided*, That at such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (3) of this section shall be imposed; or

(h) Transfer to a nonprofit, nonsectarian organization or association, organized and conducted for nonsectarian purposes, and such land would qualify for property tax exemption pursuant to RCW 84.36.030 and is used solely for the benefit of the poor and infirm. This subsection (h) applies only to taxes, penalties, and interest under this section that have been assessed for the removal of property from classification under this chapter after September 1, 1977, and before July 1, 1980. Any person or entity who has paid taxes to which this subsection (h) applies may apply within one hundred and eighty days after May 16, 1985, for a refund of the tax paid. [1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

84.34.111 Remedies available to owner liable for additional tax. The owner of any land as to which additional tax is imposed as provided in *this 1973 amendatory act shall have with respect to valuation of the land and imposition of the additional tax all remedies provided by Title 84 RCW. [1973 1st ex.s. c 212 § 13.]

*Reviser's note: For "this 1973 amendatory act", see note following RCW 84.34.030.

84.34.121 Information required. The assessor may require owners of land classified under this chapter to submit pertinent data regarding the use of the land, productivity of typical crops, and such similar information pertinent to continued classification and appraisal of the land. [1973 1st ex.s. c 212 § 14.]

84.34.131 Valuation of timber not affected. Nothing in *this 1973 amendatory act shall be construed as in any manner affecting the method for valuation of timber standing on timber land which has been classified under the provisions of *this 1973 amendatory act. [1973 1st ex.s. c 212 § 16.]

*Reviser's note: For "this 1973 amendatory act", see note following RCW 84.34.030.

84.34.141 Rules and regulations. The department of revenue of the state of Washington shall make such rules and regulations consistent with the provisions of *this 1973 amendatory act as shall be necessary or desirable to permit its effective administration. [1973 1st ex.s. c 212 § 17.]

*Reviser's note: For "this 1973 amendatory act", see note following RCW 84.34.030.

84.34.145 Advisory committee. The county legislative authority shall appoint a five member committee representing the active farming community within the county to serve in an advisory capacity to the county assessor in implementing assessment guidelines as established by the department of revenue for the assessment of open space, farms and agricultural lands, and timber lands classified pursuant to *this 1973 amendatory act. [1973 1st ex.s. c 212 § 11.]

*Reviser's note: For "this 1973 amendatory act", see note following RCW 84.34.030.

84.34.150 Reclassification of land classified under prior law which meets definition of farm and agricultural land. Land classified under the provisions of chapter 84.34 RCW prior to July 16, 1973 which meets the definition of farm and agricultural land under the provisions of *this 1973 amendatory act, upon request for such change made by the owner to the county assessor, shall be reclassified by the county assessor under the provisions of *this 1973 amendatory act. This change in classification shall be made without additional tax, penalty, or other requirements: *Provided*, That subsequent to such reclassification, the land shall be fully subject to the provisions of chapter 84.34 RCW, as now or hereafter amended. [1973 1st ex.s. c 212 § 15.]

***Reviser's note:** For "this 1973 amendatory act", see note following RCW 84.34.030.

84.34.155 Reclassification of land classified as timber land which meets definition of forest land under chapter 84.33 RCW. Land classified under the provisions of chapter 84.34 RCW as timber land which meets the definition of forest land under the provisions of chapter 84.33 RCW, upon request for such change made by the owner to the county assessor, shall be reclassified by the county assessor under the provisions of chapter 84.33 RCW. This change in classification shall be made without additional tax, penalty, or other requirements set forth in chapter 84.34 RCW: *Provided*, That subsequent to such reclassification, the land shall be fully subject to the provisions of chapter 84.33 RCW, as now or hereafter amended. [1973 1st ex.s. c 212 § 19.]

84.34.160 Information on current use classification—Publication and dissemination. The department of revenue and each local assessor is hereby directed to publicize the qualifications and manner of making applications for current use classification. Whenever possible notice of the qualifications, method of making applications, and availability of further information on current use classification shall be included with the second half property tax statements for 1973, and thereafter, shall be included with every notice of change in valuation of unplatted lands. [1973 1st ex.s. c 212 § 18.]

84.34.200 Acquisition of open space, etc., land or rights to future development by counties, cities, or metropolitan municipal corporations—Legislative declaration—Purposes. The legislature finds that the haphazard growth and spread of urban development is encroaching upon, or eliminating, numerous open areas and spaces of varied size and character, including many devoted to agriculture, the cultivation of timber, and other productive activities, and many others having significant recreational, social, scenic, or esthetic values. Such areas and spaces, if preserved and maintained in their present open state, would constitute important assets to existing and impending urban and metropolitan development, at the same time that they would continue to contribute to the welfare and well-being of the citizens of the state as a whole. The acquisition of interests or rights in real property for the preservation of such open spaces and areas constitutes a public purpose for which public funds may properly be expended or advanced. [1971 ex.s. c 243 § 1.]

84.34.210 Acquisition of open space, land, or rights to future development by certain entities—Authority to acquire—Conveyance or lease back. Any county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, the fee simple

or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land, farm and agricultural land, and timber land as such are defined in chapter 84.34 RCW for public use or enjoyment. Among interests that may be so acquired are mineral rights. Any county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire such property for the purpose of conveying or leasing the property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of *this 1971 amendatory act. [1987 c 341 § 2; 1975-'76 2nd ex.s. c 22 § 1; 1971 ex.s. c 243 § 2.]

***Reviser's note:** "This 1971 amendatory act" [1971 ex.s. c 243] consists of the enactment of RCW 39.33.060, 57.08.140, 84.34.200 through 84.34.240, and 84.34.920 and the 1971 amendment to RCW 84.52.010.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by certain entities: RCW 64.04.130.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

84.34.220 Acquisition of open space, land, or rights to future development by certain entities—Developmental rights—"Conservation futures"—Acquisition—Restrictions. In accordance with the authority granted in RCW 84.34.210, a county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may specifically purchase or otherwise acquire, except by eminent domain, rights in perpetuity to future development of any open space land, farm and agricultural land, and timber land which are so designated under the provisions of chapter 84.34 RCW and taxed at current use assessment as provided by that chapter. For the purposes of *this 1971 amendatory act, such developmental rights shall be termed "conservation futures". The private owner may retain the right to continue any existing open space use of the land, and to develop any other open space use, but, under the terms of purchase of conservation futures, the county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may forbid or restrict building thereon, or may require that improvements cannot be made without county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, permission. The land may be alienated or sold and used as formerly by the new owner, subject to the terms of the agreement made by the county, city, town, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in

RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, with the original owner. [1987 c 341 § 3; 1975-'76 2nd ex.s. c 22 § 2; 1971 ex.s. c 243 § 3.]

*Reviser's note: For "this 1971 amendatory act", see note following RCW 84.34.210.

84.34.230 Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association—Property tax levy authorized. For the purpose of acquiring conservation futures as well as other rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220, a county may levy an amount not to exceed six and one-quarter cents per thousand dollars of assessed valuation against the assessed valuation of all taxable property within the county, which levy shall be in addition to that authorized by RCW 84.52.050 and 84.52.043. [1973 1st ex.s. c 195 § 94; 1973 1st ex.s. c 195 § 145; 1971 ex.s. c 243 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.34.240 Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association—Conservation futures fund. Any board of county commissioners may establish by resolution a special fund which may be termed a conservation futures fund to which it may credit all taxes levied pursuant to RCW 84.34.230. Amounts placed in this fund may be used solely for the purpose of acquiring rights and interests in real property pursuant to the terms of RCW 84.34.210 and 84.34.220. Nothing in this section shall be construed as limiting in any manner methods and funds otherwise available to a county for financing the acquisition of such rights and interests in real property. [1971 ex.s. c 243 § 5.]

84.34.250 Nonprofit nature conservancy corporation or association defined. As used in RCW 84.34.210, as now or hereafter amended, and RCW 84.34.220, as now or hereafter amended, "nonprofit nature conservancy corporation or association" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c) (of the Internal Revenue Code) as it exists on June 25, 1976 and one which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife habitat to be utilized as public access areas, for the use and enjoyment of the general public. [1975-'76 2nd ex.s. c 22 § 4.]

84.34.300 Special benefit assessments for farm and agricultural land—Legislative findings—Purpose. The legislature finds that farming and the related agricultural industry have historically been and currently are central factors in the economic and social lifeblood of

the state; that it is a fundamental policy of the state to protect agricultural lands as a major natural resource in order to maintain a source to supply a wide range of agricultural products; and that the public interest in the protection and stimulation of farming and the agricultural industry is a basic element of enhancing the economic viability of this state. The legislature further finds that farmland in urbanizing areas is often subjected to high levels of property taxation and benefit assessment, and that such levels of taxation and assessment encourage and even force the premature removal of such lands from agricultural uses. The legislature further finds that because of this level of taxation and assessment, such farmland in urbanizing areas is either converted to nonagricultural uses when significant amounts of nearby nonagricultural area could be suitably used for such nonagricultural uses, or, much of this farmland is left in an unused state. The legislature further finds that with the approval by the voters of the Fifty-third Amendment to the state Constitution and with the enactment of chapter 84.34 RCW, the owners of farmlands were provided with an opportunity to have such land valued on the basis of its current use and not its "highest and best use" and that such current use valuation is one mechanism to protect agricultural lands. The legislature further finds that despite this potential property tax reduction, farmlands in urbanized areas are still subject to high levels of benefit assessments and continue to be removed from farm uses.

It is therefore the purpose of the legislature to establish, with the enactment of RCW 84.34.300 through 84.34.380, another mechanism to protect agricultural land which creates an analogous system of relief from certain benefit assessments for farm and agricultural land. It is the intent of the legislature that special benefit assessments not be imposed for the availability of sanitary and/or storm sewerage service, or domestic water service, or for road construction and/or improvement purposes on farm and agricultural lands which have been designated for current use classification as farm and agricultural lands until such lands are withdrawn or removed from such classification.

The legislature finds, and it is the intent of RCW 84.34.300 through 84.34.380 and 84.34.922, that special benefit assessments for the improvement or construction of sanitary and/or storm sewerage service, or domestic water service, or certain road construction do not generally benefit land which has been classified as open space farm and agricultural land under the open space act, chapter 84.34 RCW, until such land is withdrawn from such classification or such land is used for a more intense and nonagricultural use. The purpose of RCW 84.34.300 through 84.34.380 and 84.34.922 is to provide an exemption from certain special benefit assessments which do not benefit open space farm and agricultural land, and to provide the means for local governmental entities to recover such assessments in current dollar value in the event such land is no longer devoted to farming under chapter 84.34 RCW. Where the owner of such land chooses to make limited use of improvements related to special benefit assessments, RCW 84.34.300

through 84.34.380 and 84.34.922 provides the means for the partial assessment on open space farmland to the extent the land is directly benefited by the improvement. [1979 c 84 § 1.]

84.34.310 Special benefit assessments for farm and agricultural land—Definitions. As used in RCW 84.34.300 through 84.34.380, unless a different meaning is required, the words defined in this section shall have the meanings indicated.

(1) "Farm and agricultural land" shall mean the same as defined in RCW 84.34.020(2).

(2) "Local government" shall mean any city, town, county, sewer district, water district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes.

(3) "Local improvement district" shall mean any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(4) "Owner" shall mean the same as defined in RCW 84.34.020(5) or the applicable statutes relating to special benefit assessments.

(5) The term "average rate of inflation" shall mean the annual rate of inflation as determined by the department of revenue averaged over the period of time as provided in RCW 84.34.330 (1) and (2). Such determination shall be published not later than January 1 of each year for use in that assessment year.

(6) "Special benefit assessments" shall mean special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement. [1979 c 84 § 2.]

84.34.320 Special benefit assessments for farm and agricultural land—Exemption from assessment—Procedures relating to exemption—Constructive notice of potential liability—Waiver of exemption. Any farm and agricultural land which is designated for current use classification pursuant to chapter 84.34 RCW at the earlier of the times the legislative authority of a local government adopts a resolution, ordinance, or legislative act (1) to create a local improvement district, in which such land is included or would have been included but for such classification designation, or (2) to approve or confirm a final special benefit assessment roll relating to a sanitary and/or storm sewerage system, domestic water supply and/or distribution system, or road construction and/or improvement, which roll would have

included such land but for such classification designation, shall be exempt from special benefit assessments or charges in lieu of assessment for such purposes as long as that land remains in such classification, except as otherwise provided in RCW 84.34.360.

Whenever a local government creates a local improvement district, the levying, collection and enforcement of assessments shall be in the manner and subject to the same procedures and limitations as are provided pursuant to the law concerning the initiation and formation of local improvement districts for the particular local government. Notice of the creation of a local improvement district that includes farm and agricultural land shall be filed with the county assessor and the legislative authority of the county in which such land is located. The county assessor, upon receiving notice of the creation of such a local improvement district, shall send a notice to the owner of the farm and agricultural lands listed on the tax rolls of the applicable county treasurer of: (1) the creation of the local improvement district; (2) the exemption of that land from special benefit assessments; (3) the fact that the farm and agricultural land may become subject to the special benefit assessments if the owner waives the exemption by filing a notarized document with the governing body of the local government creating the local improvement district before the confirmation of the final special benefit assessment roll; and (4) the potential liability, pursuant to RCW 84.34.330, if the exemption is not waived and the land is subsequently removed from the farm and agricultural land status. When a local government approves and confirms a special benefit assessment roll, from which farm and agricultural land has been exempted pursuant to this section, it shall file a notice of such action with the county assessor and the legislative authority of the county in which such land is located and with the treasurer of that local government, which notice shall describe the action taken, the type of improvement involved, the land exempted, and the amount of the special benefit assessment which would have been levied against the land if it had not been exempted. The filing of such notice with the county assessor and the treasurer of that local government shall constitute constructive notice to a purchaser or encumbrancer of the affected land, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded, that such exempt land is subject to the charges provided in RCW 84.34.330 and 84.34.340 if such land is withdrawn or removed from its current use classification as farm and agricultural land.

The owner of the land exempted from special benefit assessments pursuant to this section may waive that exemption by filing a notarized document to that effect with the legislative authority of the local government upon receiving notice from said local government concerning the assessment roll hearing and before the local government confirms the final special benefit assessment roll. A copy of that waiver shall be filed by the local government with the county assessor, but the failure of such filing shall not affect the waiver.

Except to the extent provided in RCW 84.34.360, the local government shall have no duty to furnish service from the improvement financed by the special benefit assessment to such exempted land. [1979 c 84 § 3.]

84.34.330 Special benefit assessments for farm and agricultural land—Withdrawal from classification or change in use—Liability—Amount—Due date—Lien. Whenever farm and agricultural land has once been exempted from special benefit assessments pursuant to RCW 84.34.320, any withdrawal from classification or change in use from farm and agricultural land under chapter 84.34 RCW shall result in the following:

(1) If the bonds used to fund the improvement in the local improvement district have not been completely retired, such land shall immediately become liable for: (a) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus (b) interest on the amount determined in (1)(a) of this section, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity which created the local improvement district as provided in RCW 84.34.320 to the time the owner withdraws such land from the exemption category provided by this chapter; or

(2) If the bonds used to fund the improvement in the local improvement district have been completely retired, such land shall immediately become liable for: (a) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus (b) interest on the amount determined in (2)(a) of this section compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity which created the local improvement district as provided in RCW 84.34.320, to the time the bonds used to fund the improvement have been retired; plus (c) interest on the total amount determined in (2) (a) and (b) of this section at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement have been retired to the time the owner withdraws such lands from the exemption category provided by this chapter.

(3) The amount payable pursuant to this section shall become due on the date such land is withdrawn or removed from its current use classification and shall be a lien on the land prior and superior to any other lien whatsoever except for the lien for general taxes, and shall be enforceable in the same manner as the collection of special benefit assessments are enforced by that local government. [1979 c 84 § 4.]

84.34.340 Special benefit assessments for farm and agricultural land—Withdrawal or removal from classification—Notice to local government—Statement to owner of amounts payable—Delinquency date—Enforcement procedures. Whenever farm and agricultural land is withdrawn or removed from its current use classification as farm and agricultural land, the county assessor of the county in which such land is located shall

forthwith give written notice of such withdrawal or removal to the local government or its successor which had filed with the assessor the notice required by RCW 84.34.320. Upon receipt of the notice from the assessor, the local government shall mail a written statement to the owner of such land for the amounts payable as provided in RCW 84.34.330. Such amounts due shall be delinquent if not paid within one hundred and eighty days after the date of mailing of the statement, and shall be subject to the same interest, penalties, lien priority, and enforcement procedures that are applicable to delinquent assessments on the assessment roll from which that land had been exempted, except that the rate of interest charged shall not exceed the rate provided in RCW 84.34.330. [1979 c 84 § 5.]

84.34.350 Special benefit assessments for farm and agricultural land—Use of payments collected. Payments collected pursuant to RCW 84.34.330 and 84.34.340, or by enforcement procedures referred to therein, after the payment of the expenses of their collection, shall first be applied to the payment of general or special debt incurred to finance the improvements related to the special benefit assessments, and, if such debt is retired, then into the maintenance fund or general fund of the governmental entity which created the local improvement district, or its successor, for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district; (2) maintenance expenses of the district; or (3) construction or acquisition of any facilities necessary to carry out the purpose of the district. [1979 c 84 § 6.]

84.34.360 Special benefit assessments for farm and agricultural land—Rules to implement RCW 84.34.300 through 84.34.380. Within ninety days after June 7, 1979, the department of revenue shall adopt rules it shall deem necessary to implement RCW 84.34.300 through 84.34.380 which shall include, but not be limited to, procedures to determine the extent to which a portion of the land otherwise exempt may be subject to a special benefit assessment for the actual connection to the domestic water system or sewerage facilities, and further to determine the extent to which all or a portion of such land may be subject to a special benefit assessment for access to the road improvement in relation to its value as farm and agricultural land as distinguished from its value under more intensive uses. The provision for limited special benefit assessments shall not relieve such land from liability for the amounts provided in RCW 84.34.330 and 84.34.340 when such land is withdrawn or removed from its current use classification as farm and agricultural land. [1979 c 84 § 7.]

84.34.370 Special benefit assessments for farm and agricultural land—Assessments due on land withdrawn or changed. Whenever a portion of a parcel of land which was classified as farm and agricultural land pursuant to this chapter is withdrawn from classification or there is a change in use, and such land has been exempted from any benefit assessments pursuant to RCW

84.34.320, the previously exempt benefit assessments shall become due on only that portion of the land which is withdrawn or changed. [1979 c 84 § 8.]

84.34.380 Special benefit assessments for farm and agricultural land—Application of exemption to rights and interests preventing nonagricultural uses. Farm and agricultural land on which the right to future development has been acquired by any local government, the state of Washington, or the United States government shall be exempt from special benefit assessments in lieu of assessment for such purposes in the same manner, and under the same liabilities for payment and interest, as land classified under this chapter as farm and agricultural land, for as long as such classification applies.

Any interest, development right, easement, covenant, or other contractual right which effectively protects, preserves, maintains, improves, restores, prevents the future nonagricultural use of, or otherwise conserves farm and agricultural land shall be exempt from special benefit assessments as long as such development right or other such interest effectively serves to prevent nonagricultural development of such land. [1979 c 84 § 9.]

84.34.900 Severability—1970 ex.s. c 87. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1970 ex.s. c 87 § 15.]

84.34.910 Effective date—1970 ex.s. c 87. The provisions of this act shall take effect on January 1, 1971. [1970 ex.s. c 87 § 16.]

84.34.920 Severability—1971 ex.s. c 243. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 243 § 9.]

84.34.921 Severability—1973 1st ex.s. c 212. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 212 § 20.]

84.34.922 Severability—1979 c 84. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1979 c 84 § 11.]

Chapter 84.36 EXEMPTIONS

Sections	
84.36.005	Property subject to taxation.
84.36.010	Public property exempt.
84.36.020	Cemeteries, churches, parsonages, convents and grounds.

84.36.030	Property used for character building, benevolent, protective or rehabilitative social services—Camp facilities—Veteran or relief organization owned property—Property of nonprofit organizations that issue debt for student loans or that are guarantee agencies.
84.36.031	Property used for character building, benevolent, protective or rehabilitative social services—Property not exempt.
84.36.032	Administrative offices of nonprofit religious organizations.
84.36.035	Nonprofit organization engaged in procuring, processing, etc., blood, plasma or blood products.
84.36.037	Nonprofit organization property connected with operation of public assembly hall or meeting place.
84.36.040	Day care centers, libraries, orphanages, nursing homes, hospitals, outpatient dialysis facilities.
84.36.043	Nonprofit organization property used in providing non-permanent shelter to indigent homeless persons.
84.36.045	Nonprofit organization property available without charge for medical research or training of medical personnel.
84.36.047	Nonprofit organization property used for transmission or reception of radio or television signals originally broadcast by governmental agencies.
84.36.050	Schools and colleges.
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- Federal agencies and instrumentalities: State Constitution Art. 7 §§ 1, 3; Title 37 RCW.*
- Flood control district property: RCW 86.09.520.*
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84.36.005 Property subject to taxation. All property now existing, or that is hereafter created or brought into this state, shall be subject to assessment and taxation for state, county, and other taxing district purposes, upon equalized valuations thereof, fixed with reference thereto on the first day of January at twelve o'clock meridian in each year, excepting such as is exempted from taxation by law. [1961 c 15 § 84.36.005. Prior: 1955 c 196 § 2; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ .1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

84.36.010 Public property exempt. All property belonging exclusively to the United States, the state, any county or municipal corporation, and all property under a recorded agreement granting immediate possession and use to said public bodies or under an order of immediate possession and use pursuant to RCW 8.04.090, shall be exempt from taxation. All property belonging exclusively to a foreign national government shall be exempt from taxation if such property is used exclusively as an office or residence for a consul or other official representative of such foreign national government, and if the consul or other official representative is a citizen of such foreign nation. [1971 ex.s. c 260 § 1; 1969 c 34 § 1. Prior: 1967

ex.s. c 149 § 31; 1967 ex.s. c 145 § 35; 1961 c 15 § 84.36.010; prior: 1955 c 196 § 3; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

84.36.020 Cemeteries, churches, parsonages, convents and grounds. The following property shall be exempt from taxation:

All lands, and buildings required for necessary administration and maintenance, used, or to the extent used, exclusively for public burying grounds or cemeteries without discrimination as to race, color, national origin or ancestry;

All churches and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or shall be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. The area exempted shall in any case include all ground covered by the church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property and the structures and ground necessary for street access, parking, light, and ventilation, but the area of unoccupied ground exempted in such cases, in connection with church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property, shall not exceed the equivalent of one hundred twenty by one hundred twenty feet except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements. The parsonage and convent need not be on land contiguous to the church property. To be exempt the property must be wholly used for church purposes: *Provided*, That the loan or rental of property otherwise exempt under this paragraph to a nonprofit organization, association, or corporation, or school for use for an eleemosynary activity shall not nullify the exemption provided in this paragraph if the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property. [1975 1st ex.s. c 291 § 12; 1973 2nd ex.s. c 40 § 1; 1971 ex.s. c 64 § 3; 1961 c 103 § 3; 1961 c 15 § 84.36.020. Prior: 1955 c 196 § 4; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Construction—1961 c 103: See note following RCW 49.60.040.

Burial lot for particular person: RCW 68.24.220.

Nonprofit cemetery associations, certain exemptions: RCW 68.20.110, 68.20.120.

84.36.030 Property used for character building, benevolent, protective or rehabilitative social services—Camp facilities—Veteran or relief organization owned property—Property of nonprofit organizations that issue debt for student loans or that are guarantee agencies. The following real and personal property shall be exempt from taxation:

(1) Property owned by nonprofit organizations or associations, organized and conducted for nonsectarian purposes, which shall be used for character-building, benevolent, protective or rehabilitative social services directed at persons of all ages. The sale of donated merchandise shall not be considered a commercial use of the property under this section if the proceeds are devoted to the furtherance of the purposes of the selling organization or association as specified in this paragraph.

(2) Property owned by any nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches or their qualified representatives, which is utilized as a camp facility if used for organized and supervised recreational activities and church purposes as related to such camp facilities. The exemption provided by this paragraph shall apply to a maximum of two hundred acres of any such camp as selected by the church, including buildings and other improvements thereon.

(3) Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations or associations engaged in character building of boys and girls under eighteen years of age, and used for such purposes and uses, provided such purposes and uses are for the general public good: *Provided*, That if existing charters provide that organizations or associations, which would otherwise qualify under the provisions of this paragraph, serve boys and girls up to the age of twenty-one years, then such organizations or associations shall be deemed qualified pursuant to this section.

(4) Property owned by all organizations and societies of veterans of any war of the United States, recognized as such by the department of defense, which shall have national charters, and which shall have for their general purposes and objects the preservation of the memories and associations incident to their war service and the consecration of the efforts of their members to mutual helpfulness and to patriotic and community service to state and nation. To be exempt such property must be used in such manner as may be reasonably necessary to carry out the purposes and objects of such societies.

(5) Property owned by all corporations, incorporated under any act of congress, whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same

in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(6) Property owned by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans.

(7) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805. [1987 c 433 § 2; 1984 c 220 § 1; 1983 1st ex.s. c 25 § 1; 1973 2nd ex.s. c 40 § 2. Prior: 1971 ex.s. c 292 § 70; 1971 ex.s. c 64 § 1; 1969 c 137 § 1; 1961 c 15 § 84.36.030; prior: 1955 c 196 § 5; prior: (i) 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. (ii) 1945 c 109 § 1; Rem. Supp. 1945 § 11111a.]

Applicability—1983 1st ex.s. c 25: "This act is effective for property taxes levied in calendar year 1983 and due and payable in calendar year 1984 and thereafter." [1983 1st ex.s. c 25 § 2.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

84.36.031 Property used for character building, benevolent, protective or rehabilitative social services—Property not exempt. Property leased, loaned, sold with the option to repurchase, or otherwise made available to organizations as set out in RCW 84.36.030 above shall not be exempt from taxation: *Provided*, That property which is owned by an organization as set out in RCW 84.36.030 may loan the property to another organization for the same purpose as set out in RCW 84.36.030. [1969 c 137 § 2.]

84.36.032 Administrative offices of nonprofit religious organizations. The real and personal property of the administrative offices of nonprofit recognized religious organizations shall be exempt to the extent that the property is used for the administration of the religious programs of the organization and such other programs as would be exempt under RCW 84.36.020 and 84.36.030 as now or hereafter amended. [1975 1st ex.s. c 291 § 13.]

Effective dates—**Severability**—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.035 Nonprofit organization engaged in procuring, processing, etc., blood, plasma or blood products. The following property shall be exempt from taxation:

All property, whether real or personal, belonging to any nonprofit corporation or association and used exclusively in the business of procuring, processing, storing,

distributing, or using whole blood, plasma, blood products, and blood derivatives or in the administration of such business. [1971 ex.s. c 206 § 1.]

84.36.037 Nonprofit organization property connected with operation of public assembly hall or meeting place. Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre: *Provided*, That for property essentially unimproved except for restroom facilities and structures on such property which has been used primarily for annual community celebration events for at least ten years, such exempt property shall not exceed twenty-nine acres.

To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

The use of the property for pecuniary gain or to promote business activities, except fund raising activities conducted by a nonprofit organization, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by the collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses created by the user.

The department of revenue shall narrowly construe this exemption. [1987 c 505 § 80; 1981 c 141 § 2.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.040 Day care centers, libraries, orphanages, nursing homes, hospitals, outpatient dialysis facilities. The real and personal property used by nonprofit (1) day care centers as defined pursuant to RCW 74.15.020 as now or hereafter amended; (2) free public libraries; (3) orphanages and orphan asylums; (4) homes for the aged; (5) homes for the sick or infirm; (6) hospitals for the sick; and (7) outpatient dialysis facilities, which are used for the purposes of such organizations shall be exempt from taxation: *Provided*, That the benefit of the exemption inures to the user.

To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805. [1987 c 31 § 1; 1984 c 220 § 2; 1973 2nd ex.s. c 40 § 3; 1973 1st ex.s. c 154 § 119; 1969 ex.s. c 245 § 1; 1961 c 15 § 84.36.040. Prior: 1955 c 196 § 6; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5,

part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part.]

84.36.043 Nonprofit organization property used in providing nonpermanent shelter to indigent homeless persons. The real and personal property of a nonprofit organization used in providing nonpermanent shelter to indigent homeless persons is exempt from taxation if the charge, if any, for the shelter does not exceed the actual cost of operating and maintaining the shelter facility. This exemption is subject to the administrative provisions contained in RCW 84.36.800 through 84.36.865. [1983 1st ex.s. c 55 § 12.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

84.36.045 Nonprofit organization property available without charge for medical research or training of medical personnel. All property owned in fee or by contract purchase by any nonprofit corporation or association which is available without charge for research by, or for the training of, doctors, nurses, laboratory technicians, hospital administrators and staff or other hospital personnel, and which otherwise is used for medical research, the results of which will be available without cost to the public, shall be exempt from ad valorem taxation.

To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805. [1984 c 220 § 3; 1975 1st ex.s. c 291 § 23.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.047 Nonprofit organization property used for transmission or reception of radio or television signals originally broadcast by governmental agencies. The following property shall be exempt from taxation:

Real and personal property owned by or leased to any nonprofit corporation or association and, except as provided in RCW 84.36.805, used exclusively to rebroadcast, amplify, or otherwise facilitate the transmission and/or reception of radio and/or television signals originally broadcast by foreign or domestic governmental agencies for reception by the general public: *Provided*, That in the event such property is leased, the benefit of the exemption shall inure to the user. [1984 c 220 § 4; 1977 ex.s. c 348 § 1.]

Effective date—Construction—1977 ex.s. c 348: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, shall take effect immediately and shall be effective for assessment in 1977 for taxes due and payable in 1978." [1977 ex.s. c 348 § 3.]

84.36.050 Schools and colleges. The following property shall be exempt from taxation:

Property owned or used for any nonprofit school or college in this state for educational purposes or cultural or art educational programs as defined in RCW 82.04-.4328. Real property so exempt shall not exceed four

hundred acres in extent and, except as provided in RCW 84.36.805, shall be used exclusively for college or campus purposes including but not limited to, buildings and grounds designed for the educational, athletic, or social programs of said institution, the housing of students, the housing of religious faculty, the housing of the chief administrator, athletic buildings and all other school or college facilities, the need for which would be nonexistent but for the presence of such school or college and which are principally designed to further the educational functions of such college or schools. If the property is leased, the benefit of the exemption shall inure to the user. [1984 c 220 § 5; 1973 2nd ex.s. c 40 § 4; 1971 ex.s. c 206 § 2; 1970 ex.s. c 55 § 1; 1961 c 15 § 84.36.050. Prior: 1955 c 196 § 7; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Effective date—1970 ex.s. c 55: "The effective date of this 1970 amendatory act is July 1, 1970." [1970 ex.s. c 55 § 14.]

84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. The following property shall be exempt from taxation:

All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections; and all the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance: *Provided*, That to qualify for this exemption an organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public;

All fire engines and other implements used for the extinguishment of fire, with the buildings used exclusively for the safekeeping thereof, and for meetings of fire companies, provided such properties belong to any city or town or to a fire company therein;

Property owned by humane societies in this state in actual use by such societies. [1981 c 141 § 1; 1973 2nd ex.s. c 40 § 5; 1961 c 15 § 84.36.060. Prior: 1955 c 196 § 8; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Applicability, construction—1981 c 141: "This act shall apply to taxes payable in 1982 and in subsequent years and shall be strictly construed." [1981 c 141 § 6.]

84.36.070 Intangibles exempt. The following intangible property shall be exempt from ad valorem taxation: All moneys and credits including mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county and municipal bonds and warrants and bonds and warrants of other taxing districts, bonds of the United States and of foreign countries or political subdivisions thereof and the bonds, stocks or shares of private corporations, private nongovernmental personal service contracts or private nongovernmental athletic or sports franchises or private nongovernmental athletic or sports agreements provided that such contracts, franchises or agreements do not pertain to the use or possession of tangible personal or real property or to any interest in tangible personal or real property. [1974 ex.s. c 118 § 1; 1961 c 15 § 84.36.070. Prior: 1931 c 96 § 1; RRS § 11111-1. FORMER PART OF SECTION: 1925 ex.s. c 130 § 5, part, now codified in RCW 84.04.080.]

84.36.079 Rights, title, interest, and materials of certain vessels under construction. All rights, title or interest in or to any vessel of more than one thousand ton burden, and the materials and parts held by the builder of the vessel at the site of construction for the specific purpose of incorporation therein, shall be exempt from taxation while the vessel is under construction within this state. [1961 c 15 § 84.36.079. Prior: 1959 c 295 § 1.]

84.36.080 Partial exemption for ships and vessels exempt from excise tax under RCW 82.49.020(2) and 88.02.030(10)—Vessels listed on state or federal register of historic places. (1) All ships and vessels which are exempt from excise tax under subsection (2) of RCW 82.49.020 and subsection (10) of RCW 88.02.030 shall be and are hereby made exempt from all ad valorem taxes, except taxes levied for any state purpose.

(2) All ships and vessels listed in the state or federal register of historical places are exempt from all ad valorem taxes. [1986 c 229 § 1; 1983 2nd ex.s. c 3 § 51; 1983 c 7 § 23; 1961 c 15 § 84.36.080. Prior: 1945 c 82 § 1; 1931 c 81 § 1; Rem. Supp. 1945 § 11111-2.]

Application—1986 c 229: "This act shall be effective for taxes levied for collection in 1987, and thereafter." [1986 c 229 § 4.]

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—**Severability**—**Effective dates**—1983 c 7: See notes following RCW 82.08.020.

Listing of taxable ships and vessels with department of revenue: RCW 84.40.065.

Valuation of vessels—*Apportionment:* RCW 84.40.036.

84.36.090 Exemption for other ships and vessels. All ships and vessels, other than those partially exempt under RCW 84.36.080 and those described in RCW 84.36.079, are exempt from all ad valorem taxes. [1983 c 7 § 24; 1961 c 15 § 84.36.090. Prior: 1959 c 295 § 2; 1945 c 82 § 2; 1931 c 81 § 2; Rem. Supp. 1945 § 11111-3.]

Construction—**Severability**—**Effective dates**—1983 c 7: See notes following RCW 82.08.020.

84.36.100 Size of vessel immaterial. RCW 84.36.080 and 84.36.090 shall apply to all ships, vessels and boats, irrespective of size, and to the taxes thereon becoming due and payable. [1961 c 15 § 84.36.100. Prior: 1945 c 82 § 3; 1931 c 81 § 3; Rem. Supp. 1945 § 11111-4.]

84.36.105 Cargo containers used in ocean commerce. All cargo containers principally used for the transportation of cargo by vessels in ocean commerce shall be exempt from taxation. The term "cargo container" means a receptacle:

(1) Of a permanent character and accordingly strong enough to be suitable for repeated use;

(2) Specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by vessels, without intermediate reloading;

(3) Fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; and

(4) Designed to be easy to fill and empty. [1975 1st ex.s. c 20 § 1.]

84.36.110 Household goods and personal effects—**Three hundred dollars actual value to head of family.** The following property shall be exempt from taxation:

(1) All household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use.

(2) The personal property, other than specified in subdivision (1) hereof, of each head of a family liable to assessment and taxation of which such individual is the actual and bona fide owner to an amount of three hundred dollars of actual values: *Provided*, That this exemption shall not apply to any private motor vehicle, or mobile home, and: *Provided, further*, That if the county assessor is satisfied that all of the personal property of any person is exempt from taxation under the provisions of this statute or any other statute providing exemptions for personal property, no listing of such property shall be

required; but if the personal property described in subdivision (2) of this section exceeds in value the amount allowed as exempt, then a complete list of said personal property shall be made as provided by law, and the county assessor shall deduct the amount of the exemption authorized by this subdivision from the total amount of the assessment and assess the remainder. [1971 ex.s. c 299 § 71; 1961 c 15 § 84.36.110. Prior: 1935 c 27 § 1; RRS § 11111-7.]

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

84.36.120 Household goods and personal effects—**Definitions.** For the purposes of RCW 84.36.110 "head of a family" shall be construed to include a surviving spouse not remarried, any person receiving an old age pension under the laws of this state and any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years.

"Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles and the like.

"Private motor vehicle" shall be construed to mean and include all motor vehicles used for the convenience or pleasure of the owner and carrying a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer or dealers' licenses.

"Mobile home" shall be construed to mean and include all trailers of the type designed as facilities for human habitation and which are capable of being moved upon the public streets and highways and which are more than thirty-five feet in length or more than eight feet in width. [1973 1st ex.s. c 154 § 120; 1971 ex.s. c 299 § 72; 1961 c 15 § 84.36.120. Prior: 1935 c 27 § 2; RRS § 11111-8.]

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

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

84.36.130 Airport property in this state belonging to municipalities of adjoining states. All property, whether real or personal, belonging exclusively to any municipal corporation in an adjoining state legally empowered by the laws of such adjoining state to acquire and hold property within this state, and which property is used primarily for airport purposes and other facilities for landing, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property or mail, or in the armed forces of the United States, and upon which property there is expended funds by the federal, county or state agencies, or upon which funds are allocated by the federal government agencies on national defense projects, is hereby exempted from ad valorem taxation. [1961 c 15 §

84.36.130. Prior: 1941 c 13 § 1; Rem. Supp. 1941 § 11111-10.]

84.36.135 Real and personal property of housing finance commission. The real and personal property of the state housing finance commission established by chapter 43.180 RCW are exempt from taxation. [1983 c 161 § 26.]

Severability—**Effective dates**—1983 c 161: See RCW 43.180-.903 and 43.180.904.

84.36.140 Exemption of grains, flour, fruit, vegetables, fish and unprocessed timber—**Limitation**—**Proof of shipment.** All grains and flour, fruit and fruit products, unprocessed timber, vegetables and vegetable products, and fish and fish products, while being transported to or held in storage in a public or private warehouse or storage area shall be exempt from taxation if actually shipped to points outside the state on or before April 30th of the first year for which they would otherwise be taxable: *Provided*, That proof of shipment be furnished as required in RCW 84.36.150: *Provided further*, That the exemption provided for herein with respect to unprocessed timber shall be applicable only with respect to such timber if actually shipped to points outside the United States, its territories and possessions. [1972 ex.s. c 30 § 2; 1961 c 15 § 84.36.140. Prior: 1939 c 67 § 2; RRS § 11130-5.]

Effective date—1972 ex.s. c 30: See note following RCW 84.36.160.

84.36.150 Exemption of grains, flour, fruit, vegetables, fish and unprocessed timber—**Listing and subsequent cancellation**—**Proof.** All such grains and flour, fruit and fruit products, vegetables and vegetable products, and fish and fish products shall be listed and assessed as of January 1st of each year, without regard to any average inventory; but the assessor shall cancel any such assessment in whole or in proportionate part upon receipt of sufficient documentary proof that the property so assessed was actually shipped to points outside the state on or before April 30th of such year: *Provided*, That no such cancellation shall be made unless such proof be furnished to the county assessor before June 1st of such year: *Provided further*, That any such assessment of grain shall also be subject to cancellation as provided in this section if sufficient documentary proof be so furnished that the grain so assessed was milled into flour and such flour was actually shipped to points outside the state on or before April 30th of such year. [1967 ex.s. c 149 § 32; 1961 c 15 § 84.36.150. Prior: 1939 c 67 § 3; RRS § 11130-6.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.36.160 Exemption of grains, flour, fruit, vegetables, fish and unprocessed timber—**Definitions.** For the

purposes of RCW 84.36.140, 84.36.150, 84.36.161 and 84.36.162:

The term "grains and flour" shall mean and include all raw whole grains in their usual marketable state; and grain flour in the hands of the first processor; but not any other grain product.

The term "fruit and fruit products" shall mean and include all raw edible fruits, berries and hops; and all processed products of fruits, berries or hops, suitable and designed for human consumption, while in the hands of the first processor.

The term "vegetables and vegetable products" shall mean and include all raw edible vegetables, such as peas, beans, beets, sugar beets, and other vegetables; and all processed products of vegetables, suitable and designed for human consumption, while in the hands of the first processor.

The term "fish and fish products" shall mean and include all fish and fish products suitable and designed for human consumption, excluding all others.

The term "processed" shall be construed to refer to canning, barreling, bottling, preserving, refining, freezing, packing, milling or any other method employed to keep any grain, fruit, vegetables or fish in edible condition or to put them into more suitable or convenient form for consumption, storing, shipping or marketing. [1972 ex.s. c 30 § 1; 1971 ex.s. c 137 § 1; 1961 c 15 § 84.36.160. Prior: 1939 c 67 § 1; RRS § 11130-4.]

Effective date—1972 ex.s. c 30: "This 1972 amendatory act shall take effect July 1, 1972." [1972 ex.s. c 30 § 3.]

84.36.161 Exemption of grains, flour, fruit, vegetables, fish and unprocessed timber—Construction of RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.162—Effect on other acts. RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.162 shall not be construed to amend or repeal RCW 84.40.210 or 84.44.060. [1961 c 15 § 84.36.161. Prior: 1939 c 67 § 4; RRS § 11130-7.]

84.36.162 Exemption of grains, flour, fruit, vegetables, fish and unprocessed timber—Purpose. The purpose of RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.161 is to encourage the storage of the commodities herein defined in the state of Washington and RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.161 shall be liberally construed. [1961 c 15 § 84.36.162. Prior: 1939 c 67 § 6; RRS § 11130-9.]

84.36.176 Plywood, hardboard and particle board panels in transit. All finished plywood, hardboard and particle board panels shipped from without this state to any processing plant within this state, where the panels are moving under a through freight rate to final destination outside this state and the carrier grants the shipper the privilege of stopping the shipment in transit for the purpose of storing, milling, manufacturing or other processing, while such panels are in the process of being treated or shaped into flat component parts to be incorporated into finished products outside this state and for

thirty days after completion of such processing or treatment shall be considered and held to be property in transit and nontaxable. [1967 ex.s. c 149 § 34.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.36.181 Ores, metals from out of state in process of reduction or refinement. All ore or metal shipped from without this state to any smelter or refining works within this state, while in process of reduction or refinement and for thirty days after completion of such reduction or refinement, shall be considered and held to be property in transit and nontaxable. [1961 c 168 § 2. Prior: 1961 c 15 § 84.40.210, part, 1939 c 66 § 1; 1927 c 282 § 1; 1925 ex.s. c 130 § 26; 1921 c 60 § 1; 1897 c 71 § 19; 1893 c 124 § 19; 1891 c 140 § 19; 1890 p 538 § 20; RRS § 11130.]

84.36.190 Metals in cathode or bar form for sale and held under negotiable warehouse receipt. All metals refined by electrolytic process into cathode or bar form while in such form and held under negotiable warehouse receipt in a public or private warehouse recognized by an established incorporated commodity exchange, and for sale through such exchange, shall be considered and held to be property in transit and not taxable. [1961 c 15 § 84.36.190. Prior: 1949 c 36 § 1; Rem. Supp. 1949 § 11111-13.]

84.36.191 Metals in cathode or bar form for sale and held under negotiable warehouse receipt—Purpose and construction. The purpose of RCW 84.36.190 is to encourage the storage of such products in the state of Washington, and to this end RCW 84.36.190 shall be liberally construed. [1961 c 15 § 84.36.191. Prior: 1949 c 36 § 2; Rem. Supp. 1949 § 11111-14.]

84.36.210 Public right of way easements. Whenever the state, or any city, town, county or other municipal corporation has obtained a written easement for a right of way over and across any private property and the written instrument has been placed of record in the county auditor's office of the county in which the property is located, the easement rights shall be exempt from taxation and exempt from general tax foreclosure and sale for delinquent property taxes of the property over and across which the easement exists; and all property tax records of the county and tax statements relating to the servient property shall show the existence of such easement and that it is exempt from the tax; and any notice of sale and tax deed relating to the servient property shall show that such easement exists and is excepted from the sale of the servient property. [1961 c 15 § 84.36.210. Prior: 1947 c 150 § 1; Rem. Supp. 1947 § 11188-1.]

84.36.230 Interstate bridges—Reciprocity. Any bridge, including its approaches, over rivers or bodies of water forming interstate boundaries, which bridge has

been constructed or acquired and is being operated by any foreign state bordering upon such common interstate boundary, or which has been constructed or acquired and is being operated by any county, city or other municipality of such foreign state, shall be exempt from all property and other taxes in the state of Washington, if the foreign state exempts from all taxation any bridge or bridges constructed or acquired and being operated by the state of Washington or any county, city or other municipality thereof. [1961 c 15 § 84.36.230. Prior: 1949 c 224 § 1; Rem. Supp. 1949 § 11111-12.]

84.36.240 Soil and water conservation districts, personal property. All personal property belonging solely to soil and water conservation districts shall be exempt from taxation: *Provided*, That the exemption contained herein shall not apply to property of any such district which engages in contract work for persons or firms not landowners or cooperators of a district. [1963 c 179 § 1.]

84.36.250 Water distribution property owned by nonprofit corporation or cooperative association. The following property shall be exempt from taxation:

All property, whether real or personal belonging to any nonprofit corporation or cooperative association and used exclusively for the distribution of water to its shareholders or members. [1965 ex.s. c 173 § 31.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

84.36.260 Property, interests, etc., used for conservation of ecological systems, natural resources, or open space—Conservation or scientific research organizations. All real property interests, including fee simple or any lesser interest, development rights, easements, covenants and conservation futures, as that latter term is defined in RCW 84.34.220 as now or hereafter amended, used exclusively for the conservation of ecological systems, natural resources, or open space, including park lands, held by any nonprofit corporation or association the primary purpose of which is the conducting or facilitating of scientific research or the conserving of natural resources or open space for the general public, shall be exempt from ad valorem taxation if either of the following conditions are met:

(1) To the extent feasible considering the nature of the property interest involved, such property interests shall be used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities for the general public or the preservation of native plants or animals, or biotic communities, or works of ancient man or geological or geographical formations, of distinct scientific and educational interest, and not for the pecuniary benefit of any person or company, as defined in RCW 82.04.030, and shall be open to the general public for educational and scientific research purposes subject to reasonable restrictions designed for its protection; or

(2) Such property interests shall be subject to an option, accepted in writing by the state, a city or a county, or department of the United States government, for the purchase thereof by the state, a city or a county, or the United States, at a price not exceeding the lesser of the following amounts: (a) the sum of the original purchase cost to such nonprofit corporation or association plus interest from the date of acquisition by such corporation or association at the rate of six percent per annum compounded annually to the date of the exercise of the option; or (b) the appraised value of the property at the time of the granting of the option, as determined by the department of revenue or when the option is held by the United States, or by an appropriate agency thereof. [1979 ex.s. c 193 § 1; 1975-'76 2nd ex.s. c 22 § 3; 1973 c 112 § 1; 1967 ex.s. c 149 § 43.]

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.36.262 Cessation of use giving rise to exemption. Upon cessation of the use which has given rise to an exemption hereunder, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the ten years preceding, or the life of such exemption if such be less, together with interest at the same rate and computed in the same way as that upon delinquent property taxes. [1973 c 112 § 2.]

Additional tax payable at time of sale—Appeal of assessed values: RCW 84.36.812.

84.36.264 Application for exemption under RCW 84.36.260. Owners of property desiring tax exempt status pursuant to the provisions of RCW 84.36.260, as now or hereafter amended, shall make an application therefor with the assessor of the county wherein such property is located. Prior to approval the assessor shall forward a copy of the initial application to the department of revenue and a copy of the option if such property qualifies pursuant to RCW 84.36.260(2), as now or hereafter amended. Such option shall clearly state the purchase price pursuant to the option or the appraisal value as determined by the department of revenue. [1973 c 112 § 3.]

84.36.270 Real property beneath air space dedicated to public body for stadium facilities. Subject to the terms and conditions set forth in RCW 84.36.280, whenever the owner of any real property dedicates the perpetual right to use the air space over his property to any county, city or other political subdivision of this state for the construction, operation and maintenance of stadium facilities, or for any parking facilities to be used in connection therewith, pursuant to the provisions of chapter 67.28 RCW, such property shall be exempt from general property taxation to such extent and as to such dollar rate as shall be determined by the county, city or other political subdivision, and subject to being used by a public body for a public purpose and only so long as the owner allows the use by the public body of the dedicated

air rights free of rents or other charges. [1973 1st ex.s. c 195 § 95; 1967 ex.s. c 117 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.36.280 Real property beneath air space dedicated to public body for stadium facilities—Exemption effective only on completion of construction of facility. Any exemption authorized under RCW 84.36.270 shall take effect only after the completion of construction of a stadium, or parking facilities to be used in connection therewith, in the air space dedicated, and shall be effective only with respect to property directly beneath such stadium or parking facilities: *Provided*, That no exemption from general property taxation be allowed for parking facilities unless adjacent and contiguous to the principal stadium installation or no more than two thousand feet from such stadium. For purposes of this section, construction shall be deemed completed on the date of the issuance of a certificate of completion by the architect or engineer designated for this purpose by the public body owning the stadium. [1967 ex.s. c 117 § 2.]

84.36.290 Real property beneath air space dedicated to public body for stadium facilities—Taxes for school purposes not affected. RCW 84.36.270 and 84.36.280 shall not be construed as exempting any property from any taxes for school purposes. [1967 ex.s. c 117 § 3.]

84.36.300 Stocks of merchandise, goods, wares or material—Aircraft parts, etc.—When eligible for exemption. There shall be exempt from taxation a portion of each separately assessed stock of merchandise, as that word is defined in this section, owned or held by any taxpayer on the first day of January of any year computed by first multiplying the total amount of that stock of such merchandise, as determined in accordance with RCW 84.40.020, by a percentage determined by dividing the amount of such merchandise brought into this state by the taxpayer during the preceding year for that stock by the total additions to that stock by the taxpayer during that year, and then multiplying the result of the latter computation by a percentage determined by dividing the total out-of-state shipments of such merchandise by the taxpayer during the preceding year from that stock (and regardless of whether or not any such shipments involved a sale of, or a transfer of title to, the merchandise within this state) by the total shipments of such merchandise by the taxpayer during the preceding year from that stock. As used in this section, the word "merchandise" means goods, wares, merchandise or material which were not manufactured in this state by the taxpayer and which were acquired by him (in any other manner whatsoever, including manufacture by him outside of this state) for the purpose of sale or shipment in substantially the same form in which they were acquired by him within this state or were brought into this state by him. Breaking of packages or of bulk shipments, packaging, repackaging, labeling or relabeling shall not be considered as a change in form within the meaning of this section. A taxpayer who has

made no shipments of merchandise, either out-of-state or in-state, during the preceding year, may compute the percentage to be applied to the stock of merchandise on the basis of his experience from March 1 of the preceding year to the last day of February of the current year, in lieu of computing the percentage on the basis of his experience during the preceding year. The rule of strict construction shall not apply to this section.

All rights, title or interest in or to any aircraft parts, equipment, furnishings, or accessories (but not engines or major structural components) which are manufactured outside of the state of Washington and are owned by purchasers of the aircraft constructed, under construction or to be constructed in the state of Washington, and are shipped into the state of Washington for installation in or use in connection with the operation of such aircraft shall be exempt from taxation prior to and during construction of such aircraft and while held in this state for periods preliminary to and during the transportation of such aircraft from the state of Washington. [1973 c 149 § 2; 1969 ex.s. c 124 § 1.]

Effective date—Savings—1969 ex.s. c 124: "This 1969 act shall be effective as of January 1, 1969: *Provided, however*, That the repeals contained in this act shall not be construed as affecting any existing right acquired or any liability or obligation incurred under the provision of the statutes repealed." [1969 ex.s. c 124 § 7.]

84.36.301 Legislative finding and declaration. The legislature hereby finds and declares that to promote the policy of a free and uninhibited flow of commerce as established by federal constitutional and legislative dictate, it is desirable to exempt from property taxation, according to the provisions of RCW 84.36.300, certain parts and equipment coming into the state of Washington to be placed in vehicles which are then transferred to the possession of out-of-state owners. The legislature further recognizes that the temporary existence of these parts and equipment within the state justifies a tax exempt status which serves to encourage the manufacture and assemblage of vehicles within the state thereby promoting increased economic activity and jobs for our residents. [1973 c 149 § 1.]

84.36.310 Stocks of merchandise, goods, wares or material—Claim—Filing—Form—Signing and verifying. Any person claiming the exemption provided for in RCW 84.36.300 shall file such claim with his listing of personal property as provided by RCW 84.40.040. The claim shall be in the form prescribed by the department of revenue, and shall require such information as the department deems necessary to substantiate the claim. The claim shall be signed and verified by the same person and in the same manner as the listing of personal property filed pursuant to RCW 84.40.040. [1969 ex.s. c 124 § 2.]

Effective date—Savings—1969 ex.s. c 124: See note following RCW 84.36.300.

84.36.320 Stocks of merchandise, goods, wares or material—Inspection of books and records. An owner

or agent filing a claim under RCW 84.36.310 shall consent to the inspection of the books and records upon which the claim has been based, such inspection to be similar in manner to that provided by RCW 84.40.340, or if the owner or agent does not maintain records within this state, the consent shall apply to the records of a warehouse, person or agent having custody of the inventory to which the claim applies. Consent to the inspection of the records shall be executed as a part of the claim. The owner, his agent, or other person having custody of the inventory referred to herein shall retain within this state, for a period of at least two years from the date of the claim, the records referred to above. If adequate records are not made available to the assessor within the county where the claim is made, then the exemption shall be denied. [1969 ex.s. c 124 § 3.]

Effective date—Savings—1969 ex.s. c 124: See note following RCW 84.36.300.

84.36.330 Stocks of merchandise, goods, wares or material—Exemption does not apply to goods taxable under RCW 84.56.180. RCW 84.36.300 shall not apply to goods or merchandise subject to taxation pursuant to RCW 84.56.180. [1969 ex.s. c 124 § 4.]

Effective date—Savings—1969 ex.s. c 124: See note following RCW 84.36.300.

84.36.350 Property owned or used for sheltered workshops for handicapped. The following property shall be exempt from taxation:

Real or personal property owned and used by a non-profit corporation in connection with the operation of a sheltered workshop for handicapped persons, and used primarily in connection with the manufacturing and the handling, sale or distribution of goods constructed, processed, or repaired in such workshops or centers; inventory owned by a sheltered workshop for sale or lease by the sheltered workshop or to be furnished under a contract of service, including raw materials, work in process, and finished products. [1975 1st ex.s. c 3 § 1; 1970 ex.s. c 81 § 1.]

84.36.353 Property owned or used for sheltered workshops for handicapped—Shelter workshop defined. Unless a different meaning is plainly required by the context, the following term as hereinafter used in *this chapter shall have the following meaning:

"Sheltered workshop" means rehabilitation facility, or that part of a rehabilitation facility operated by a non-profit corporation, where any manufacture or handiwork is carried on and which is operated for the primary purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for handicapped individuals. [1970 ex.s. c 81 § 2.]

***Reviser's note:** "This chapter" apparently refers to RCW 84.36.350.

84.36.379 Residences—Property tax exemption—Findings. The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383(6). [1980 c 185 § 3.]

Applicability—1980 c 185: "Except for the amendment to RCW 84.36.381(2) by this 1980 act, sections 3 through 5 of this 1980 act are effective for property taxes due in 1982 and thereafter." [1980 c 185 § 7.] The reference to "sections 3 through 5 of this 1980 act" refers to the enactment of RCW 84.36.379 and to the 1980 amendments to RCW 84.36.381 and 84.36.383.

84.36.381 Residences—Property tax exemptions—Qualifications. A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: *Provided*, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: *Provided further*, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must have been sixty-one years of age or older on January 1st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: *Provided*, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired

for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5) (a) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less shall be exempt from all excess property taxes; and

(b) (i) A person who otherwise qualifies under this section and has a combined disposable income of fourteen thousand dollars or less but greater than twelve thousand dollars shall be exempt from all regular property taxes on the greater of twenty-four thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed forty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twelve thousand dollars or less shall be exempt from all regular property taxes on the greater of twenty-eight thousand dollars or fifty percent of the valuation of his or her residence. [1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

Applicability—1987 c 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [1987 c 301 § 2.]

Intent—1983 1st ex.s. c 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

Applicability—1983 1st ex.s. c 11: "This act applies to taxes first due in 1984 and thereafter." [1983 1st ex.s. c 11 § 7.]

Effective dates—1983 1st ex.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 5 and 6 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 11 § 8.] "Sections 5 and 6 of this act" refer to the amendments to RCW 84.36.381 and 84.36.385 by 1983 1st ex.s. c 11 §§ 5 and 6, respectively. Except for "sections 5 and 6 of this act," the effective date of "this act," 1983 1st ex.s. c 11, including the amendments to RCW 84.36.381 and 84.36.385 by 1983 1st ex.s. c 11 §§ 2 and 3, is May 11, 1983.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979." [1979 ex.s. c 214 § 10.] Sections 1 through 4 of this act consist of the amendments by 1979 ex.s. c 214 to RCW 84.36.381, 84.36.383, 84.36.385, and 84.36.389.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—1974 ex.s. c 182: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is

held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 182 § 8.]

84.36.383 Residences—Definitions. As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04.090 or 84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: *Provided*, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1980, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

- (a) Capital gains;
- (b) Amounts deducted for loss;
- (c) Amounts deducted for depreciation;
- (d) Pension and annuity receipts;
- (e) Military pay and benefits other than attendant-care and medical-aid payments;
- (f) Veterans benefits other than attendant-care and medical-aid payments;
- (g) Federal social security act and railroad retirement benefits;
- (h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence. [1987 c 155 § 2; 1985 c 395 § 3; 1983 1st ex.s. c 11 § 4; 1980 c 185 § 5; 1979 ex.s. c 214 § 2; 1975 1st ex.s. c 291 § 15; 1974 ex.s. c 182 § 2.]

Intent—Applicability—Effective dates—1983 1st ex.s. c 11: See notes following RCW 84.36.381.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: See note following RCW 84.36.381.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.385 Residences—Claim for exemption—Forms—Change of status—Publication and notice of qualifications and manner of making claims. A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed between January 2 and July 1 for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue.

A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption shall be denied but such denial shall be subject to appeal under the provisions of RCW 84.48.010(5). If the applicant had received exemption in prior years based on erroneous information, the taxes shall be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed three years.

The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information shall be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties. [1983 1st ex.s. c 11 § 6; 1983 1st ex.s. c 11 § 3; 1979 ex.s. c 214 § 3; 1977 ex.s. c 268 § 2; 1974 ex.s. c 182 § 3.]

Intent—Applicability—Effective dates—1983 1st ex.s. c 11: See notes following RCW 84.36.381.

Applicability—1979 ex.s. c 214: See note following RCW 84.36.381.

84.36.387 Residences—Claimants—Penalty for falsification—Reduction by remainderman. (1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the residence of such person is

under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his deputy in the county where the real property is located: *Provided*, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) Any person signing a false claim with the intent to defraud or evade the payment of any tax shall be guilty of the offense of perjury.

(4) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(5) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption. [1980 c 185 § 6; 1975 1st ex.s. c 291 § 16; 1974 ex.s. c 182 § 4.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.389 Residences—Rules and regulations—Audits—Confidentiality—Criminal penalty. (1) The director of the department of revenue shall adopt such rules and regulations and prescribe such forms as may be necessary and appropriate for implementation and administration of this chapter subject to chapter 34.04 RCW, the administrative procedure act.

(2) The department may conduct such audits of the administration of RCW 84.36.381 through 84.36.389 and the claims for exemption filed thereunder as it considers necessary. The powers of the department under chapter 84.08 RCW apply to these audits.

(3) Any information or facts concerning confidential income data obtained by the assessor or the department, or their agents or employees, under subsection (2) of this section shall be used only to administer RCW 84.36.381 through 84.36.389. Notwithstanding any provision of law to the contrary, absent written consent by the person about whom the information or facts have been obtained, the confidential income data shall not be disclosed by the assessor or the assessor's agents or

employees to anyone other than the department or the department's agents or employees nor by the department or the department's agents or employees to anyone other than the assessor or the assessor's agents or employees except in a judicial proceeding pertaining to the taxpayer's entitlement to the tax exemption under RCW 84.36.381 through 84.36.389. Any violation of this subsection is a misdemeanor. [1979 ex.s. c 214 § 4; 1974 ex.s. c 182 § 5.]

Applicability—1979 ex.s. c 214: See note following RCW 84.36.381.

84.36.400 Improvements to single family dwellings. Any physical improvement to single family dwellings upon real property shall be exempt from taxation for the three assessment years subsequent to the completion of the improvement to the extent that the improvement represents thirty percent or less of the value of the original structure. A taxpayer desiring to obtain the exemption granted by this section must file notice of his intention to construct the improvement prior to the improvement being made on forms prescribed by the department of revenue and furnished to the taxpayer by the county assessor: *Provided*, That this exemption cannot be claimed more than once in a five-year period.

The department of revenue shall promulgate such rules and regulations as are necessary and convenient to properly administer the provisions of this section. [1972 ex.s. c 125 § 3.]

Severability—1972 ex.s. c 125: See note following RCW 84.40.045.

84.36.451 Right to occupy or use certain public property (including leasehold interests). The following property shall be exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

(1) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington; or

(2) A public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites; and

(3) Including any leasehold interest arising from the property identified in subsections (1) and (2) of this section as defined in RCW 82.29A.020: *Provided*, That the exemption under this section shall not apply to any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW nor be construed to modify the provisions of RCW 84.40.230. [1979 ex.s. c 196 § 10; 1975-'76 2nd ex.s. c 61 § 14.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective date—**Severability**—1975-'76 2nd ex.s. c 61: See RCW 82.29A.900 and 82.29A.910.

Leasehold excise tax: Chapter 82.29A RCW.

(1987 Ed.)

84.36.470 Agricultural or horticultural produce or crop—Phase out exemption. Any agricultural or horticultural produce or crop, including any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom grown or produced for sale by any person upon his own lands or upon lands in which he has a present right of possession who is exempted from payment of business and occupation tax pursuant to RCW 82.04.330 as now or hereafter amended shall be assessed for the purposes of ad valorem taxes according to the following schedule:

Commencing with assessment as of January 1, 1975, for taxes due in 1976 the assessment level shall be seventy-five percent of true and fair value.

Commencing with assessment as of January 1, 1976, for taxes due in 1977 the assessment level shall be seventy percent of true and fair value.

Commencing with assessment as of January 1, 1977, for taxes due in 1978 the assessment level shall be sixty percent of true and fair value.

Commencing with assessment as of January 1, 1978, for taxes due in 1979 the assessment level shall be fifty percent of true and fair value.

Commencing with assessment as of January 1, 1979, for taxes due in 1980 the assessment level shall be forty percent of true and fair value.

Commencing with assessment as of January 1, 1980, for taxes due in 1981 the assessment level shall be thirty percent of true and fair value.

Commencing with assessment as of January 1, 1981, for taxes due in 1982 the assessment level shall be twenty percent of true and fair value.

Commencing with assessment as of January 1, 1982, for taxes due in 1983 the assessment level shall be ten percent of true and fair value.

Commencing with assessment as of January 1, 1983, for taxes due in 1984 such inventories shall be fully exempt under chapter 84.36 RCW.

Commencing with January 1, 1983, assessments for taxes due in 1984, taxpayers shall not be required to report, or assessors to list, the inventories covered by this phase out exemption.

Nothing in this section shall be construed to remove or otherwise affect any exemption from assessment granted by RCW 84.44.060. [1975 1st ex.s. c 291 § 17; 1974 ex.s. c 169 § 8.]

Effective dates—**Severability**—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—**Effective date**—**Intent**—1974 ex.s. c 169: See notes following RCW 82.04.444.

Powers of department of revenue to promulgate rules and prescribe procedures to carry out this section: RCW 84.40.405.

84.36.473 "Business inventories" and "successor" defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 84.36.475 and 84.36.477:

(1) "Business inventories" means all livestock and means personal property not under lease or rental, acquired or produced solely for the purpose of sale or lease, or for the purpose of consuming such property in

producing for sale or lease a new article of tangible personal property of which such property becomes an ingredient or component. Business inventories shall not mean personal property acquired or produced for the purpose of lease or rental if such property was leased or rented at any time during the calendar year immediately preceding the year of assessment and was not thereafter remanufactured, nor shall it include property held within the normal course of business for lease or rental for periods of less than thirty days. It shall not include agricultural or horticultural property fully or partially exempt under RCW 84.36.470 or timber which is standing on public land and which is sold under a contract entered into after August 1, 1982. It shall include inventories of finished goods and work in process. For purposes of this section, "remanufacturing" shall mean restoration of property to essentially original condition, but shall not mean normal maintenance or repairs.

(2) "Successor" shall have the meaning given to it in RCW 82.04.180. [1983 1st ex.s. c 62 § 2; 1982 c 174 § 1; 1975 1st ex.s. c 291 § 8; 1974 ex.s. c 169 § 4. Formerly RCW 82.04.443.]

Short title—Intent—1983 1st ex.s. c 62: "(1) This act shall be known as the homeowner's property tax relief act of 1983.

(2) The intent of the inventory tax phaseout was to stimulate the economy of the state and to increase the revenues of the state and local taxing districts by attracting new business, encouraging the expansion of existing businesses thereby increasing economic activity and tax revenue on noninventory property. The inventory tax phaseout will cause certain unforeseen and heretofore unprepared for tax shifts among property owners.

(3) This act is intended to lessen the impact of the property tax shift. Relief is provided by the following means:

(a) The state will provide fourteen million dollars over a four-year period to lessen the impact on the most severely affected districts.

(b) Persons purchasing timber on public lands after August 1, 1982, are required to continue to pay property tax on those timber inventories. They will receive a credit against the timber excise tax for these property tax payments.

(c) Local governments are granted the ability to lessen their short-term reliance on the property tax without reducing their future ability to levy property taxes." [1983 1st ex.s. c 62 § 1.]

Effective dates—Applicability—1983 1st ex.s. c 62: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 13, 1983], except sections 6 through 8 and 14 of this act which shall take effect January 1, 1984, and shall be effective for taxes first due in 1984 and thereafter." [1983 1st ex.s. c 62 § 15.] "Sections 6 through 8 and 14 of this act" consist of the enactment of RCW 84.36.477 and 84.33.077; the 1983 1st ex.s. c 62 amendment to RCW 84.33.040; and the repeal of RCW 82.04.442 and 84.40.400. "This act" consists of the 1983 1st ex.s. c 62 amendments to RCW 82.04.443 (recodified as RCW 84.36.473), 84.33.040, and 84.40.405; the enactment of RCW 84.09.080, 84.36.475, 84.36.477, 84.33.077, 84.33.078, 84.52.015, 84.55.005, and 84.55.090 and the sections noted above; and the repeal of RCW 82.04.442 and 84.40.400.

Effective date—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—Effective date—Intent—1974 ex.s. c 169: See notes following RCW 82.04.444.

Rules and regulations, procedures: RCW 84.40.405.

84.36.475 "Excess inventory value" and "excess inventory district" defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 84.09.080, 84.52.015, and 84.36.477.

(1) "Excess inventory value" for a taxing district means that portion of the total assessed value of business inventories in the district which exceeds fifteen percent of the total assessed value of property in the district, as listed for 1984 taxes prior to the allowance of the exemption under RCW 84.36.477.

(2) "Excess inventory district" means a taxing district with an excess inventory value greater than zero. [1983 1st ex.s. c 62 § 3.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.
Rules and regulations, procedures: RCW 84.40.405.

84.36.477 Business inventories. Business inventories as defined in RCW 84.36.473 are exempt from property taxation. [1983 1st ex.s. c 62 § 6.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.
Rules and regulations, procedures: RCW 84.40.405.

84.36.480 Nonprofit fair associations. The following property shall be exempt from taxation: The real and personal property of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture. To be exempt under this section, the property must be used exclusively for fair purposes, except as provided in RCW 84.36.805. However, the loan or rental of property otherwise exempt under this section to a private concessionaire or to any person for use as a concession in conjunction with activities permitted under this section shall not nullify the exemption if the concession charges are subject to agreement and the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property. [1984 c 220 § 6; 1975 1st ex.s. c 291 § 22.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.485 Cogeneration facilities—Claims for exemption—Forms—Verification—Administrative rules. Cogeneration facilities which have been granted a cogeneration tax credit certificate under chapter 82.35 RCW shall be exempt from property taxation for a period of seven years from the date on which the facility is operational or until the certificate is revoked, whichever is first. For the purposes of the exemption under this section the value of the cogeneration facility shall be based upon the cost shown in the certificate.

Claims for the exemption authorized by this section shall be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. The assessor shall verify and approve such claims as he or she determines to be justified in accordance with this section.

The department of revenue shall promulgate such rules and regulations, pursuant to chapter 34.04 RCW as are necessary and convenient to properly administer the provisions of this section. [1979 ex.s. c 191 § 9.]

Severability—1979 ex.s. c 191: See RCW 82.35.900.

Business and occupation tax credit for cogeneration facilities: Chapter 82.35 RCW.

84.36.490 Land, buildings, machinery, etc., used to manufacture alcohol fuel—Exceptions—Limitations—Claims—Administrative rules. (1) For the purposes of this section, "alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements and machines or implements of husbandry.

(2) All buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, the land upon which such property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, but not land necessary for growing of crops, which together comprise a new alcohol manufacturing facility or an addition to an existing alcohol manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

For alcohol manufacturing facilities which produce alcohol for use as alcohol fuel and alcohol used for other purposes, the amount of the property tax exemption shall be based upon an annually determined percentage of the total gallons of alcohol produced that is sold or used as alcohol fuel.

(3) Claims for exemptions authorized by this section shall be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. Once filed, the exemption is valid for six years and shall not be renewed. The assessor shall verify and approve such claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 1992.

The department of revenue may promulgate such rules, pursuant to chapter 34.04 RCW, as are necessary to properly administer this section. [1985 c 371 § 7; 1980 c 157 § 1.]

84.36.500 Conservation futures on agricultural land. All conservation futures on agricultural lands acquired pursuant to RCW 64.04.130 or 84.34.200 through 84.34.240, that are held by any nonprofit corporation or association, the primary purpose of which is conserving agricultural lands and preventing the conversion of such lands to nonagricultural uses, shall be exempt from ad valorem taxation if:

(1) The conservation futures are of an unlimited duration;

(2) The conservation futures are effectively restricted to preclude nonagricultural uses on such agricultural land; and

(3) The lands are classified as farm and agricultural lands under chapter 84.34 RCW: *Provided*, That at such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in RCW 84.34.108(3) shall be imposed. [1984 c 131 § 11.]

(1987 Ed.)

84.36.510 Mobile homes in dealer's inventory. Any mobile home which is a part of a dealer's inventory and held solely for sale in the ordinary course of the dealer's business and is not used for any other purpose shall be exempt from property taxation: *Provided*, That this exemption shall not apply to property taxes already levied or delinquent on such mobile home at the time it becomes part of a dealer's inventory. [1985 c 395 § 7.]

GENERAL PROVISIONS

84.36.800 Definitions. As used in RCW 84.36.020, 84.36.030, 84.36.040, 84.36.050, 84.36.060, 84.36.037, and 84.36.800 through 84.36.865:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of clergymen or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a clergyman who is designated for a particular congregation and who holds regular services therefor. [1981 c 141 § 3; 1973 2nd ex.s. c 40 § 6.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations. In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

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(ii) Except for the exemption under RCW 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption: *Provided*, That the property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.040 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480. [1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

Applicability—1987 c 468: "This act shall be effective for taxes levied for collection in 1988 and thereafter." [1987 c 468 § 3.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.810 Cessation of use under which exemption granted—Collection of taxes. (1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.040, 84.36.050, 84.36.060, and 84.36.037, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes: *Provided*, That where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost

its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040 or 84.36.060. [1987 c 468 § 2; 1984 c 220 § 8; 1983 c 185 § 1; 1981 c 141 § 5; 1977 ex.s. c 209 § 1; 1973 2nd ex.s. c 40 § 8.]

Applicability—1987 c 468: See note following RCW 84.36.805.

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.812 Additional tax payable at time of sale—Appeal of assessed values. All additional taxes imposed under RCW 84.36.262 or 84.36.810 shall become due and payable by the seller or transferor at the time of sale. The county auditor shall not accept an instrument of conveyance unless the additional tax has been paid or the department of revenue has determined that the property is not subject to RCW 84.36.262 or 84.36.810. The seller, the transferor, or the new owner may appeal the assessed values upon which the additional tax is based to the county board of equalization. [1984 c 220 § 9.]

84.36.813 Change in use—Duty to notify county assessor—Examination—Recommendation. An exempt property owner shall notify the department of revenue of any change of use prior to each assessment year. Any other person believing that a change in the use of exempt property has occurred shall report same to the county assessor, who shall examine the property and if the use is not in compliance with chapter 84.36 RCW he shall report the information to the department with a recommendation that the exempt status be canceled. The final determination shall be made by the department. [1977 ex.s. c 209 § 3.]

84.36.815 Initial and renewal applications for exemption—Affidavit certifying exempt status—Cancellation of taxes. In order to qualify for exempt status for real or personal property pursuant to the provisions of chapter 84.36 RCW, as now or hereafter amended, all

foreign national governments, churches, cemeteries, non-governmental nonprofit corporations, organizations, and associations, private schools or colleges, and soil and water conservation districts shall file an initial application on or before March 31 with the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

In order to requalify for exempt status, such applicants except nonprofit cemeteries shall file a renewal application on or before March 31 of the fourth year following the date of such initial application and on or before March 31 of every fourth year thereafter. An applicant previously granted exemption shall annually file, on forms prescribed by the department, an affidavit certifying the exempt status of the real or personal property owned by the exempt organization. When an organization acquires real property qualified for exemption or converts real property to exempt status, such organization shall file an initial application for the property within sixty days following the acquisition or conversion. If the application is filed after the expiration of the sixty-day period a late filing penalty shall be imposed pursuant to RCW 84.36.825, as now or hereafter amended.

When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a cancellation of the pro rata portion of taxes payable for the remaining portion of the year from the date of acquisition or conversion plus exemption for the following year. If the owner has paid taxes allocable to that portion of the year subsequent to the date of acquisition or conversion, the owner is entitled to a pro rata refund of the amount paid on the property so acquired or converted. [1984 c 220 § 10; 1975 1st ex.s. c 291 § 18; 1973 2nd ex.s. c 40 § 9.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.820 Application forms to be mailed to owners of exempt property—Failure to file before due date, effect. On or before January 1 of each year, the department of revenue shall mail application forms to owners of record of property exempted from property taxation at their last known address who must file annually for continued exemption. The department of revenue shall notify the assessor of the county in which the property is located who shall remove the tax exemption from any property if an application has not been approved for exemption: *Provided*, That failure to file and subsequent removal of exemption shall not be subject to review as provided in RCW 84.36.850: *Provided further*, That the department of revenue shall review applications received after the March 31 due date, but such applications shall be subject to late filing penalties provided in RCW 84.36.825 as now or hereafter amended. [1984 c 220 § 11; 1975-'76 2nd ex.s. c 127 § 1; 1973 2nd ex.s. c 40 § 10.]

84.36.825 Application fee—Waiver authorized—Applications for 1974 considered initial applications—Late filing penalty. An application fee of thirty-five dollars for each initial and renewal application shall be required and shall be deposited within the general fund: *Provided*, That the department of revenue may waive the application fee related to the property of any church or cemetery applying for exemption under the provisions of RCW 84.36.020 whose gross receipts related to the use of such property for exempt purposes did not exceed two thousand five hundred dollars during the calendar year preceding the application year. Applications made for assessment year 1974, if approved, shall be considered initial applications whether or not an exemption has previously been approved. A late filing penalty of ten dollars per month for each month an application is past due shall be required and shall be deposited in the general fund. [1977 ex.s. c 209 § 2; 1975-'76 2nd ex.s. c 127 § 2; 1975 1st ex.s. c 291 § 19; 1973 2nd ex.s. c 40 § 11.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.830 Review of applications for exemption—Procedure—Approval or denial—Notice. The department of revenue shall review each application for exemption and make a determination thereon prior to August 1st of the assessment year for which such application is made: *Provided*, That each exemption application received after March 31 shall be reviewed and determination made thereon within thirty days of the date received or by August 1, whichever is later. The department of revenue may request such additional relevant information as it deems necessary. The department of revenue shall make a physical inspection of the property and satisfy itself as to the use of all parcels prior to approving or denying the application, and thereafter at regular intervals designed to insure compliance with this chapter. When the department of revenue has examined the application and the subject property, it shall either approve or deny the request and clearly state the reasons for denial in written notification by certified mail to the applicant. The department shall also notify the assessor of the county in which the property is located. The county assessor shall place such property on the assessment roll for the current year. [1984 c 220 § 12; 1975-'76 2nd ex.s. c 127 § 3; 1973 2nd ex.s. c 40 § 12.]

84.36.833 Application for exemption or renewal may include all contiguous exempt property. Each application for property tax exemption, or renewal thereof, may include all the real and personal property eligible for exempt status under any of the sections of chapter 84.36 RCW which are contiguous and part of a homogenous unit. Properties separated by public streets and roads shall be considered to be contiguous for purposes of this section. [1975-'76 2nd ex.s. c 127 § 4.]

84.36.835 List of exempt properties to be prepared and furnished each county assessor. On or before August 31st, the department of revenue shall prepare a list by

county of those properties exempted under *this 1973 amendatory act, and shall forward a list to each county assessor of the property exempt in that county. [1973 2nd ex.s. c 40 § 13.]

*Reviser's note: "This 1973 amendatory act" [1973 2nd ex.s. c 40] consists of amendments to RCW 84.36.020, 84.36.030, 84.36.040, and 84.36.060 and the enactment of RCW 84.36.800 through 84.36.905.

84.36.840 Statements—Reports—Information—Filing—Requirements. In order to determine whether organizations, associations, corporations or institutions except those exempted under RCW 84.36.020 and 84.36.030 are exempt from taxes within the intent of this chapter, and before the exemption shall be allowed for any year, the superintendent or manager or other proper officer of the organization, association, corporation or institution claiming exemption from taxation shall file, with the department of revenue on forms furnished by the director, a signed statement made under oath that the income and the receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it, or for its capital expenditures, and to no other purpose. Such forms shall also include a statement of the receipts and disbursements of said organization: *Provided*, That institutions claiming exemption under RCW 84.36.050 shall file in addition a list of all property claimed to be exempt, the purpose for which it is used, the revenue derived from it for the preceding year, the use to which such revenue was applied, the number of students in attendance at the school or college, the total revenues of the institution with the source from which they were derived, and the purposes to which such revenues were applied, giving the items of such revenues and expenditures in detail.

Such report shall be submitted on or before April 1st following the close of the accounting period for the fiscal year ended during the previous calendar year. The department of revenue shall remove the tax exemption from the property and assets of any organization, association, corporation, or institution which does not file such report with the department of revenue on or before the due date: *Provided*, That the department of revenue shall allow a reasonable extension of time for filing upon written request filed on or before the required filing date and for good cause shown therein. [1973 2nd ex.s. c 40 § 14.]

84.36.845 Revocation of exemption approved or renewed due to inaccurate information. If subsequent to the time that the exemption of any property is initially approved or renewed, it shall be determined that such exemption was approved or renewed as the result of inaccurate information provided by the authorized agent of the applicant, the exemption shall be revoked and taxes shall be levied against such property pursuant to the provisions of RCW 84.36.810. [1973 2nd ex.s. c 40 § 15.]

84.36.850 Review—Appeals. Any applicant aggrieved by the department of revenue's denial of an exemption application may petition the state board of tax

appeals to review an application for either real or personal property tax exemption and the board shall consider any appeals to determine (1) if the property is entitled to an exemption, and (2) the amount or portion thereof.

A county assessor of the county in which the exempted property is located shall be empowered to appeal to the state board of tax appeals to review any real or personal property tax exemption approved by the department of revenue which he feels is not warranted.

Appeals from a department of revenue decision must be made within thirty days of the notification of the approval or denial. [1973 2nd ex.s. c 40 § 16.]

84.36.855 Property changing from exempt to taxable status—Procedure. Property which changes from exempt to taxable status shall be subject to the provisions of RCW 84.36.810 and RCW 84.40.350 through 84.40.390, and the assessor shall also place the property on the assessment roll for taxes due and payable in the following year. [1973 2nd ex.s. c 40 § 17.]

84.36.860 Public notice of provisions of act. Each county assessor and the director of the department of revenue shall each issue public notice of the provisions of *this 1973 amendatory act in such a manner as will give constructive notice to all taxpayers of that county or of the state, as the case may be, prior to the first year in which an application for exemption is required by RCW 84.36.815 through 84.36.845. [1973 2nd ex.s. c 40 § 18.]

*Reviser's note: For "this 1973 amendatory act", see note following RCW 84.36.835.

84.36.865 Rules and regulations. The department of revenue of the state of Washington shall make such rules and regulations consistent with chapter 34.04 RCW and the provisions of this chapter as shall be necessary or desirable to permit its effective administration. [1975 1st ex.s. c 291 § 20; 1973 2nd ex.s. c 40 § 19.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.900 Severability—1973 2nd ex.s. c 40. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 40 § 22.]

84.36.905 Effective date—Construction—1973 2nd ex.s. c 40. This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, shall take effect immediately and shall be effective for assessment in 1973 for taxes due and payable in 1974. [1973 2nd ex.s. c 40 § 23.]

Chapter 84.38

DEFERRAL OF SPECIAL ASSESSMENTS AND/OR PROPERTY TAXES

Sections	
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84.38.020	Definitions.
84.38.030	Conditions and qualifications for claiming deferral.
84.38.040	Declaration to defer special assessments and/or real property taxes—Filing—Contents—Appeal.
84.38.050	Renewal of deferral—Forms—Notice to renew—Limitation upon special assessment deferral amount.
84.38.060	Declaration of deferral by agent, guardian, etc.
84.38.070	Ceasing to reside permanently on property subject to deferral declaration.
84.38.080	Right to deferral not reduced by contract or agreement.
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84.38.140	Collection of deferred assessments or taxes.
84.38.150	Election to continue deferral by surviving spouse.
84.38.160	Payment of part or all of deferred taxes authorized.
84.38.170	Collection of personal property taxes not affected.
84.38.180	Forms—Rules and regulations.
84.38.900	Severability—1975 1st ex.s. c 291.
84.38.910	Effective dates—1975 1st ex.s. c 291.

84.38.010 Legislative finding and purpose. Savings once deemed adequate for retirement living have been rendered inadequate by increased tax rates, increased property values, and the failure of pension systems to adequately reflect such factors. It is therefore deemed necessary that the legislature, in addition to that tax exemption as provided for in RCW 84.36.381 through 84.36.389 as now or hereafter amended, allow retired persons to defer payment of special assessments on their residences, and to defer their real property tax obligations on their residences, an amount of up to eighty percent of their equity in said property. This deferral program is intended to assist retired persons in maintaining their dignity and a reasonable standard of living by residing in their own homes, providing for their own needs, and managing their own affairs without requiring assistance from public welfare programs. [1975 1st ex.s. c 291 § 26.]

84.38.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Claimant" means a person who is receiving a property tax exemption under RCW 84.36.381 through 84.36.389 and who either elects or is required under RCW 84.64.030 or 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on his residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Special assessment" means the charge or obligation imposed by a city, town, county, or other municipal corporation upon property specially benefited by a local improvement, including assessments under chapters 35-.44, 36.88, 36.94, 53.08, 54.16, 56.20, 57.16, 86.09, and 87.03 RCW and any other relevant chapter.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year. [1984 c 220 § 20; 1979 ex.s. c 214 § 5; 1975 1st ex.s. c 291 § 27.]

84.38.030 Conditions and qualifications for claiming deferral. A claimant may defer payment of special assessments and/or real property taxes on his property that is receiving an exemption under RCW 84.36.381 through 84.36.389 on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(2) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value.

(3) In the case of special assessment deferral, claimant must have opted for payment of such special assessments on the installment method if such method was available. [1984 c 220 § 21; 1979 ex.s. c 214 § 6; 1975 1st ex.s. c 291 § 28.]

84.38.040 Declaration to defer special assessments and/or real property taxes—Filing—Contents—Appeal. (1) Each claimant electing to defer payment of special assessments and/or real property tax obligations under this chapter shall file with the county assessor, on forms prescribed by the department and supplied by the assessor, a written declaration thereof. The declaration to defer special assessments and/or real property taxes for any year shall be filed no later than thirty days before the tax or assessment is due or thirty days after receiving notice under RCW 84.64.030 or 84.64.050, whichever is later: *Provided*, That for good cause shown, the department may waive this requirement.

(2) The declaration shall designate the property to which the deferral applies, and shall include a statement setting forth (a) a list of all members of the claimant's household, (b) the claimant's equity value in his residence, (c) facts establishing the eligibility for the deferral under the provisions of this chapter, and (d) any

other relevant information required by the rules of the department. Each copy shall be signed by the claimant subject to the penalties as provided in chapter 9.72 RCW for the false swearing. The first declaration to defer filed in a county shall include proof of the claimant's age acceptable to the assessor.

(3) The county assessor shall determine if each claimant shall be granted a deferral for each year but the claimant shall have the right to appeal this determination to the county board of equalization whose decision shall be final as to the deferral of that year. [1984 c 220 § 22; 1979 ex.s. c 214 § 7; 1975 1st ex.s. c 291 § 29.]

84.38.050 Renewal of deferral—Forms—Notice to renew—Limitation upon special assessment deferral amount. (1) (a) Declarations to defer property taxes for all years following the first year may be made by filing with the county assessor no later than thirty days before the tax is due a renewal form in duplicate, prescribed by the department of revenue and supplied by the county assessor, which affirms the continued eligibility of the claimant.

(b) In January of each year, the county assessor shall send to each claimant who has been granted deferral of ad valorem taxes for the previous year renewal forms and notice to renew.

(2) Declarations to defer special assessments shall be made by filing with the assessor no later than thirty days before the special assessment is due on a form to be prescribed by the department of revenue and supplied by the county assessor. Upon approval, the full amount of special assessments upon such claimant's residence shall be deferred but not to exceed an amount equal to eighty percent of the claimant's equity value in said property. [1979 ex.s. c 214 § 8; 1975 1st ex.s. c 291 § 30.]

84.38.060 Declaration of deferral by agent, guardian, etc. If the claimant is unable to make his own declaration of deferral, it may be made by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant. [1975 1st ex.s. c 291 § 31.]

84.38.070 Ceasing to reside permanently on property subject to deferral declaration. If the claimant declaring his intention to defer special assessments or real property tax obligations under this chapter ceases to reside permanently on the property for which the declaration to defer is made between the date of filing the declaration and December 15th of that year, the deferral otherwise allowable under this chapter shall not be allowed on such tax roll. However, this section shall not apply where the claimant dies, leaving a spouse surviving, who is also eligible for deferral of special assessment and/or property taxes. [1975 1st ex.s. c 291 § 32.]

84.38.080 Right to deferral not reduced by contract or agreement. A person's right to defer special assessments and/or property tax obligations on his residence shall not be reduced by contract or agreement, from January 1, 1976 onward. [1975 1st ex.s. c 291 § 33.]

84.38.090 Procedure where residence under mortgage or purchase contract. If any residence is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, said holder shall cosign the declaration of deferral either before a notary public or the county assessor or his deputy in the county where the real property is located. [1975 1st ex.s. c 291 § 34.]

84.38.100 Lien of state, mortgage or purchase contract holder—Priority—Amount—Interest. Whenever a person's special assessment and/or real property tax obligation is deferred under the provisions of this chapter, it shall become a lien in favor of the state upon his or her property and shall have priority as provided in chapters 35.50 and 84.60 RCW: *Provided*, That the interest of a mortgage or purchase contract holder who is required to cosign a declaration of deferral under RCW 84.38.090, shall have priority to said deferred lien. This lien may accumulate up to eighty percent of the amount of the claimant's equity value in said property and shall bear interest at the rate of eight percent per year from the time it could have been paid before delinquency until said obligation is paid. In the case of a mobile home, the department of licensing shall show the state's lien on the certificate of ownership for the mobile home. In the case of all other property, the department of revenue shall file a notice of the deferral with the county recorder or auditor. [1984 c 220 § 23; 1981 c 322 § 1; 1975 1st ex.s. c 291 § 35.]

Effective date—1984 c 220: See note following RCW 84.38.120.

84.38.110 Duties of county assessor. The county assessor shall:

(1) Immediately transmit one copy of each declaration to defer to the department of revenue. The department may audit any declaration and shall notify the assessor as soon as possible of any claim where any factor appears to disqualify the claimant for the deferral sought.

(2) Transmit one copy of each declaration to defer a special assessment to the local improvement district which imposed such assessment.

(3) Compute the dollar tax rate for the county as if any deferrals provided by this chapter did not exist.

(4) As soon as possible notify the department of revenue and the county treasurer of the amount of real property taxes deferred for that year and notify the department of revenue and the respective treasurers of municipal corporations of the amount of special assessments deferred for each local improvement district within such unit. [1984 c 220 § 24; 1975 1st ex.s. c 291 § 36.]

84.38.120 Payments to local improvement or taxing districts of assessments or taxes deferred. After receipt of the notification from the county assessor of the amount of deferred special assessments and/or real property taxes the department shall pay, from amounts appropriated for that purpose, to the treasurers of such municipal corporations said amounts, equivalent to the

amount of special assessments and/or real property taxes deferred, to be distributed to the local improvement or taxing districts which levied the taxes so deferred. [1984 c 220 § 25; 1975 1st ex.s. c 291 § 37.]

Effective date—1984 c 220 § 23: "**Section 23 of this act shall take effect July 1, 1985." [1984 c 220 § 29.]

***Reviser's note:** Due to a Senate amendment to House Bill No. 1201 (1984 c 220), "section 23" became "section 25." During enrolling, "section 23" was renumbered as "section 25" under the mandate in the amendment to "renumber the sections consecutively and correct any internal references accordingly," but the internal reference to "section 23" was not changed. "Section 23 of this act" consists of the 1984 c 220 amendment to RCW 84.38.100. "Section 25 of this act" consists of the 1984 c 220 amendment to RCW 84.38.120.

84.38.130 When deferred assessments or taxes become payable. Special assessments and/or real property tax obligations deferred under this chapter shall become payable together with interest as provided in RCW 84.38.100:

(1) Upon the sale of property which has a deferred special assessment and/or real property tax lien upon it.

(2) Upon the death of the claimant with an outstanding deferred special assessment and/or real property tax lien except a surviving spouse who is qualified under this chapter may elect to incur the special assessment and/or real property tax lien which shall then be payable by that spouse as provided in this section.

(3) Upon the condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising eminent domain power, except as otherwise provided in RCW 84.60.070.

(4) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted.

(5) Upon the failure of any condition set forth in RCW 84.38.030. [1984 c 220 § 26; 1975 1st ex.s. c 291 § 38.]

84.38.140 Collection of deferred assessments or taxes. (1) The county treasurer shall collect all the amounts deferred together with interest under this chapter, in the manner provided for in chapter 84.56 RCW. For purposes of collection of deferred taxes, the provisions of chapters 84.56, 84.60, and 84.64 RCW shall be applicable.

(2) When any deferred special assessment and/or real property taxes together with interest are collected the moneys shall be credited to a special account in the county treasury. The county treasurer shall remit the amount of deferred special assessment and/or real property taxes together with interest to the department within thirty days from the date of collection.

(3) The department shall deposit the deferred taxes in the state general fund. [1984 c 220 § 27; 1975 1st ex.s. c 291 § 39.]

84.38.150 Election to continue deferral by surviving spouse. (1) A surviving spouse of the claimant may elect to continue the property in its deferred tax status if the property is the residence of the spouse of the claimant and the spouse meets the requirements of this chapter.

(2) The election under this section to continue the property in its deferred status by the spouse of the claimant shall be filed in the same manner as an original claim for deferral is filed under this chapter, not later than ninety days from the date of the claimant's death. Thereupon, the property with respect to which the deferral of special assessments and/or real property taxes is claimed shall continue to be treated as deferred property. When the property has been continued in its deferred status by the filing of the spouse of the claimant of an election under this section, the spouse of the claimant may continue the property in its deferred status in subsequent years by filing a claim under this chapter so long as the spouse meets the qualifications set out in this section. [1975 1st ex.s. c 291 § 40.]

84.38.160 Payment of part or all of deferred taxes authorized. Any person may at any time pay a part or all of the deferred taxes but such payment shall not affect the deferred tax status of the property. [1975 1st ex.s. c 291 § 41.]

84.38.170 Collection of personal property taxes not affected. Nothing in this chapter is intended to or shall be construed to prevent the collection, by foreclosure, of personal property taxes which become a lien against tax-deferred property. [1975 1st ex.s. c 291 § 42.]

84.38.180 Forms—Rules and regulations. The department of revenue of the state of Washington shall devise the forms and make rules and regulations consistent with chapter 34.04 RCW and the provisions of this chapter as shall be necessary or desirable to permit its effective administration. [1975 1st ex.s. c 291 § 43.]

84.38.900 Severability—1975 1st ex.s. c 291. See note following RCW 82.04.050.

84.38.910 Effective dates—1975 1st ex.s. c 291. See note following RCW 82.04.050.

Chapter 84.40 LISTING OF PROPERTY

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- 84.40.405 Business inventories, agricultural property taxes—Credits, exemptions—Rules and regulations, procedures.

Qualifications for persons assessing real property—Examination: RCW 36.21.015.

84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents and records. All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the

year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: *Provided*, That confidential income data is exempted from public inspection pursuant to RCW 42.17-.310. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: *Provided*, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. [1973 c 69 § 1; 1967 ex.s. c 149 § 35; 1961 c 15 § 84.40.020. Prior: (i) 1939 c 137 § 1; 1925 ex.s. c 130 § 8; 1897 c 71 § 6; 1895 c 176 § 3; 1893 c 124 § 6; 1891 c 140 §§ 1, 6; 1890 p 532 § 6; Code 1881 § 2832; 1871 p 40 § 15; 1869 p 180 § 15; 1867 p 62 § 6; 1854 p 332 § 4; RRS § 11112. (ii) 1937 c 122 § 1; 1890 p 532 § 6; RRS § 11112-1.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.025 Access to property required. For the purpose of assessment and valuation of all taxable property in each county, any real or personal property in each county shall be subject to visitation, investigation, examination, discovery, and listing at any reasonable time by the county assessor of the county or by any employee thereof designated for this purpose by the assessor.

In any case of refusal to such access, the assessor shall request assistance from the department of revenue which may invoke the power granted by chapter 84.08 RCW. [1982 1st ex.s. c 46 § 10.]

84.40.030 Basis of valuation—Leasehold estates—Real property—Criterion of value. All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid. Notwithstanding any other provisions of this section or of any other statute, when the value of any taxable leasehold estate created prior to January 1, 1971 is being determined for assessment years prior to the assessment year 1973, there shall be deducted from what would otherwise be the value thereof the present worth of the rentals and other consideration which may be required of the lessee by the lessor for the unexpired term thereof: *Provided*, That the foregoing provisions of this sentence shall not apply to any extension or renewal, made after December 31,

1970 of the term of any such estate, or to any such estate after the date, if any, provided for in the agreement for rental renegotiation.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar property with respect to sales made within the past five years. The appraisal shall take into consideration political restrictions such as zoning as well as physical and environmental influences. The appraisal shall also take into account, (a) in the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1), consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the value of the land, exclusive of structures thereon shall be determined; also the value of structures thereon, but the valuation shall not exceed the value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

(4) In valuing any building with an unconventional heating, cooling, domestic water heating or electrical system before December 31, 1987, the value placed on the building shall not exceed the value which would be placed on the building if it had a conventional system. [1980 c 155 § 2. Prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

Intent—1980 c 155: "The legislature finds that certain residences have been subjected to excessive property taxes solely because the residences are utilizing energy saving systems. It is the intent of the legislature to prevent homeowners who install energy saving heat pumps, heating, cooling, domestic water heating and electrical systems, including active and passive solar energy systems, from being subjected to unfair property tax burdens.

The legislature further finds that the use of solar and other renewable energy resources can make a useful contribution to meeting future energy needs and that encouragement of the use of these energy resources is in the best interests of the people of the state." [1980 c 155 § 1.]

Effective date—Applicability—1980 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.] The effective date of 1980 c 155 was April 1, 1980.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Construction—1973 1st ex.s. c 187: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provision to other persons or circumstances is not affected: *Provided*, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.] This applies to the enactment of chapter 82.29 RCW and RCW 84.36.450, 84.36.455, and 84.36.460 and to the amendment to RCW 84.40.030 by 1973 1st ex.s. c 187. Sections 4, 3, and 15 consisted of the enactment of RCW 82.29.030, 82.29.020, and 84.36.460, respectively.

Severability—1972 ex.s. c 125: See note following RCW 84.40.045.

Savings—1971 ex.s. c 288: "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

Severability—1971 ex.s. c 288: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

Severability—1971 ex.s. c 43: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 43 § 6.]

Prospective and retroactive application—1971 ex.s. c 43: See RCW 84.40A.020.

84.40.0301 Determination of value by public official—Presumptions—Review—Revaluation. (1) Upon review by any court, or appellate body, of a determination of the valuation of property for purposes of taxation, it shall be presumed that the determination of the public official charged with the duty of establishing such value is correct but this presumption shall not be a defense against any correction indicated by clear, cogent and convincing evidence.

(2) In any administrative or judicial proceeding pending upon May 21, 1971 or arising from the property revaluation under the provisions of section 4, chapter 282, Laws of 1969 ex. sess., and section 1, chapter 95, Laws of 1970 ex. sess., the provisions of this section will apply. This paragraph shall not be construed so as to limit in any way the provisions of subsection (1) of this section. [1971 ex.s. c 288 § 2.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.40.031 Valuation of timber and timberlands—Criteria established. Based upon the study as directed by house concurrent resolution No. 10 of the thirty-seventh

session of the legislature relating to the taxation of timber and timberlands, the legislature hereby establishes the criteria set forth in RCW 84.40.031 through 84.40.033 as standards for the valuation of timber and timberlands for tax purposes. [1983 c 3 § 228; 1963 c 249 § 1.]

Severability—1963 c 249: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provisions to other persons or circumstances is not affected." [1963 c 249 § 6.]

84.40.032 Valuation of timber and timberlands—
"Timberlands" defined and declared lands devoted to reforestation. As used in RCW 84.40.031 through 84.40.033 "timberlands" means land primarily suitable and used for growing a continuous supply of forest products, whether such lands be cutover, selectively harvested, or contain merchantable or immature timber, and includes the timber thereon. Timberlands are lands devoted to reforestation within the meaning of Article VII, section 1 of the state Constitution as amended. [1983 c 3 § 229; 1963 c 249 § 2.]

Severability—1963 c 249: See note following RCW 84.40.031.

84.40.033 Valuation of timber and timberlands—
Legislative findings. It is hereby found and declared that:

(1) Timber constitutes the primary renewable resource of this state.

(2) It is the public policy of this state that timberlands be managed in such a way as to assure a continuous supply of forest products.

(3) It is in the public interest that forest valuation and taxation policy encourage and permit timberland owners to manage their lands to sustain maximum production of raw materials for the forest industry, to maintain other public benefits, and to maintain a stable and equitable tax base.

(4) Forest management entails continuous and accumulative burdens of taxes; protection, management costs, interest on investment, and risks of loss from fire, insects, disease and the elements over long periods of time prior to harvest and realization of income.

(5) Existing timberland valuation and taxation procedures under the general property tax system are consistent with the public interest and the public policy herein set forth only when due consideration and recognition is given to all relevant factors in determining the true and fair value in money of each tract or lot of timberland.

(6) To assure equality and uniformity of taxation of timberland, uniform principles should be applied for determining the true and fair value in money of such timberlands, taking into account all pertinent factors such as regional differences in species and growing conditions.

(7) The true and fair value in money of timberlands must be determined through application of sound valuation principles based upon the highest and best use of such properties. The highest and best use of timberlands, whether cut-over, selectively harvested, or containing merchantable or immature timber, is to manage, protect and harvest them in a manner which will realize the

greatest economic value and assure the maximum continuous supply of forest products. This requires that merchantable timber originally on timberlands be harvested gradually to maintain a continuous supply until immature timber reaches the optimum age or size for harvesting, that immature timber on timberlands be managed and protected for extensive periods until it reaches such optimum age or size and that such timberlands be continually restocked as harvested.

(8) Reforestation entails an integrated forest management program which includes gradual harvesting of existing merchantable timber, management and protection of immature timber during its growth cycle until it reaches the optimum size or age for harvesting and a continual preparation and restocking of areas after harvest. Such management of timberlands is now generally followed and practiced in this state and it is in the public interest that such management be continued and encouraged.

(9) The prices at which merchantable timber is sold generally reflect values based upon immediate harvesting, and the prices at which both merchantable and immature timber are sold frequently reflect circumstances peculiar to the particular purchaser. Such prices generally make little or no allowance for the continuous and accumulative burdens of taxes, protection, management costs, interest on investment, and risks of loss from fire, insects, disease, and the elements which must be borne by the owner of timberlands over long periods of time prior to the time timber is harvested and income is realized. Such prices do not, therefore, provide a reliable measure of the true and fair value in money. Accordingly, both the public policy and the public interest of this state and sound principles of timber valuation require that in the determination of the true and fair value in money of such properties appropriate and full allowance be made for such continuous and accumulative burdens over the period of time between assessment and harvest. [1963 c 249 § 3.]

Severability—1963 c 249: See note following RCW 84.40.031.

84.40.036 Valuation of vessels—Apportionment.

(1) As used in this section, "apportionable vessel" means a ship or vessel, other than one operated by a steamboat company as defined in RCW 84.12.200, which is:

(a) Engaged in interstate commerce;

(b) Engaged in foreign commerce; and/or

(c) Engaged exclusively in fishing, tendering, harvesting, and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(2) The value of each apportionable vessel shall be apportioned to this state based on the number of days or fractions of days that the vessel is within this state during the preceding calendar year: *Provided*, That if the total number of days the vessel is within the limits of the state does not exceed one hundred twenty for the preceding calendar year, no value shall be apportioned to this state.

(3) Days during which an apportionable vessel is in the state exclusively for one or more of the following

purposes shall not be considered as days within this state, if the length of time is reasonable for the purpose:

- (a) Undergoing repair or alteration;
 - (b) Taking on or discharging cargo, passengers, or supplies; and
 - (c) Serving as a tug for a vessel under (a) or (b) of this subsection.
- (4) Days during which an apportionable vessel leaves this state only while navigating the high seas in order to travel between points in this state shall be considered as days within this state. [1986 c 229 § 2.]

Application—1986 c 229: See note following RCW 84.36.080.
Listing of taxable ships and vessels with department: RCW 84.40.065.
Partial exemption for ships and vessels: RCW 84.36.080.

84.40.040 Time and manner of listing. The assessor shall begin the preliminary work for each assessment not later than the first day of December of each year in all counties in the state. He shall also complete the duties of listing and placing valuations on all property by May 31st of each year, except that the listing and valuation of construction under RCW 36.21.040 through 36.21.080 shall be completed by August 31st of each year, and in the following manner, to wit:

He shall actually determine as nearly as practicable the true and fair value of each tract or lot of land listed for taxation and of each improvement located thereon and shall enter one hundred percent of the value of such land and of the total value of such improvements, together with the total of such one hundred percent valuations, opposite each description of property on his assessment list and tax roll.

He shall make an alphabetical list of the names of all persons in his county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the standard form prescribed by the department of revenue, which statement and list shall include, if required by the form, the year of acquisition and total original cost of personal property in each category of the prescribed form, and shall be signed and verified under penalty of perjury by the person listing the property. Such list and statement shall be filed on or before the last day of March, but the assessor, upon written request filed on or before such date and for good cause shown therein, shall allow a reasonable extension of time for filing. The assessor shall on or before the 1st day of January of each year mail a notice to all such persons at their last known address that such statement and list is required, such notice to be accompanied by the form on which the statement or list is to be made: *Provided*, That the notice mailed by the assessor to each taxpayer each year shall, if practicable, include the statement and list of personal property of the taxpayer for the preceding year. Upon receipt of such statement and list the assessor shall thereupon determine the true and fair value of the property included in such statement and enter one hundred percent of the same in the assessment books opposite the name of the party assessed; and in making such entry in his assessment list, he shall give the name and post office address of the party listing the property, and if the party

resides in a city the assessor shall give the street and number or other brief description of his residence or place of business. The assessor may, after giving written notice of his action to the person to be assessed, add to the assessment list any taxable property which, in his judgment, should be included in such list. [1982 1st ex.s. c 46 § 5; 1973 1st ex.s. c 195 § 97; 1967 ex.s. c 149 § 36; 1961 c 15 § 84.40.040. Prior: 1939 c 206 § 16, part; 1925 ex.s. c 130 § 57, part; 1897 c 71 § 46, part; 1895 c 176 § 5, part; 1893 c 124 § 48, part; 1891 c 140 § 48, part; RRS § 11140, part.]

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.045 Notice of change in valuation of real property to be given taxpayer—**Copy to person making payments pursuant to mortgage, contract or deed of trust**—**Procedure**—**Penalty.** The assessor shall give notice of any change in the true and fair value of real property for the tract or lot of land and any improvements thereon no later than thirty days after appraisal: *Provided*, That no such notice shall be mailed during the period from January 15 to February 15 of each year: *Provided further*, That no notice need be sent with respect to changes in valuation of forest land made pursuant to chapter 84.33 RCW.

The notice shall contain a statement of both the prior and the new true and fair value and the ratio of the assessed value to the true and fair value on which the assessment of the property is based, stating separately land and improvement values, and a brief statement of the procedure for appeal to the board of equalization and the time, date, and place of the meetings of the board.

The notice shall be mailed by the assessor to the taxpayer.

If any taxpayer, as shown by the tax rolls, holds solely a security interest in the real property which is the subject of the notice, pursuant to a mortgage, contract of sale, or deed of trust, such taxpayer shall, upon written request of the assessor, supply, within thirty days of receipt of such request, to the assessor the name and address of the person making payments pursuant to the mortgage, contract of sale, or deed of trust, and thereafter such person shall also receive a copy of the notice provided for in this section. Wilful failure to comply with such request within the time limitation provided for herein shall make such taxpayer subject to a civil penalty of five dollars for each parcel of real property within the scope of the request in which it holds the security interest, the aggregate of such penalties in any one year not to exceed five thousand dollars. The penalties provided for herein shall be recoverable in an action by the county prosecutor, and when recovered shall be deposited in the county current expense fund. The assessor shall make the request provided for by this section during the month of January. [1977 ex.s. c 181 § 1;

1974 ex.s. c 187 § 8; 1972 ex.s. c 125 § 1; 1971 ex.s. c 288 § 16; 1967 ex.s. c 146 § 10.]

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

Severability—1972 ex.s. c 125: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 125 § 4.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.40.060 Assessment upon receipt of verified statement. Upon receipt of the verified statement of personal property, the assessor shall assess the value of such property and enter fifty percent of the same in his books: *Provided*, If any property is listed or assessed on or after the 31st day of May, the same shall be legal and binding as if listed and assessed before that time: *Provided, further*, That any statement of taxable property which is not signed by the person listing the property and which is not verified under penalty of perjury shall not be accepted by the assessor nor shall it be considered in any way to constitute compliance, or an attempt at compliance, with the listing requirements of this chapter. [1967 ex.s. c 149 § 37; 1961 c 15 § 84.40.060. Prior: 1939 c 206 § 17; 1925 ex.s. c 130 § 58; 1897 c 71 § 47; 1893 c 124 § 49; 1891 c 140 § 49; 1890 p 548 § 49; RRS § 11141.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.065 Listing of taxable ships and vessels with department—Assessment—Certification of values to assessors—Review. (1) Every individual, corporation, association, partnership, trust, and estate shall list with the department of revenue all ships and vessels which are subject to their ownership, possession, or control and which are not entirely exempt from property taxation, and such listing shall be subject to the same requirements, penalties, and liens provided in this chapter and chapter 84.60 RCW for all other personal property in the same manner as provided therein.

(2) The department shall assess all ships and vessels and shall certify to the respective county assessors the equalized values thereof, subject to the same rules as other state-assessed properties in accordance with RCW 84.12.370 and 84.16.130 and chapter 84.48 RCW.

(3) Any ship or vessel owner disputing the assessment under this section shall have the same rights of review as any other vessel owner subject to the excise tax contained in chapter 82.49 RCW in accordance with RCW 82.49.060. [1986 c 229 § 3; 1984 c 250 § 5. Formerly RCW 84.08.200.]

Application—1986 c 229: See note following RCW 84.36.080.

Partial exemption for ships and vessels: RCW 84.36.080.

Valuation of vessels—Apportionment: RCW 84.40.036.

84.40.070 Corporate listing. The president, secretary or principal accounting officer or agent of any company

or association, whether incorporated or unincorporated, except as otherwise provided for in this title, shall make out and deliver to the assessor a sworn statement of its property, setting forth particularly—First, the name and location of the company or association; second, the real property of the company or association, and where situated; third, the nature and value of its personal property. The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain. [1961 c 15 § 84.40.070. Prior: 1925 ex.s. c 130 § 27; 1897 c 71 § 20; 1893 c 124 § 20; 1891 c 140 § 20; 1890 p 538 § 21; Code 1881 § 2839; RRS § 11131.]

84.40.080 Listing omitted property or improvements.

The assessor, upon his own motion, or upon the application of any taxpayer, shall enter in the detail and assessment list of the current year any property shown to have been omitted from the assessment list of any preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessor shall determine from the preceding year, and such valuation shall be stated in a separate line from the valuation of the current year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section: *Provided*, That no such assessment shall be made in any case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest: *And provided further*, That in the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor. [1973 2nd ex.s. c 8 § 1; 1961 c 15 § 84.40.080. Prior: 1951 1st ex.s. c 8 § 1; 1925 ex.s. c 130 § 59; 1897 c 71 § 48; RRS § 11142.]

84.40.085 Limitation period for assessment of omitted property or value—Notification to taxpayer of omission—Procedure. No omitted property or omitted value assessment shall be made for any period more than three years preceding the year in which the omission is discovered. The assessor, upon discovery of such omission, shall forward a copy of the amended personal property affidavit along with a letter of particulars informing the taxpayer of the findings and of his right of appeal to the county board of equalization. Upon request of either the taxpayer or the assessor, the county board of equalization may be reconvened to act on subject omits. [1973 2nd ex.s. c 8 § 2.]

84.40.090 Taxing districts to be designated. It shall be the duty of assessors, when assessing real or personal property, to designate the name or number of each taxing and road district in which each person and each description of property assessed is liable for taxes, which designation shall be made by writing the name or number of the districts opposite each assessment in the column provided for that purpose in the detail and assessment list. When the real and personal property of any person is assessable in several taxing districts and/or road districts, the amount in each shall be assessed on separate detail and assessment lists, and all property assessable in incorporated cities or towns shall be assessed in consecutive books, where more than one book is necessary, separate from outside property and separately, and the name of the owner, if known, together with his post office address, placed opposite each amount. [1961 c 15 § 84.40.090. Prior: 1925 ex.s. c 130 § 62; 1897 c 71 § 51; 1893 c 124 § 52; 1891 c 140 § 52; 1890 p 551 § 57; RRS § 11145.]

84.40.100 Map of districts to be furnished by county commissioners. The county commissioners of each county shall furnish the assessor with a map of the county, showing the boundaries of each taxing and road district therein named or numbered. And the board of county commissioners in fixing, changing or revising the boundaries of any road district or districts, shall, wherever practicable, make the boundaries of such road district or districts conform to the boundaries of the school district nearest coincident thereto, to the end that the several school and road districts in each county shall correspond in territory one with the other: *Provided*, That any road district may include more than one school district. [1961 c 15 § 84.40.100. Prior: 1925 ex.s. c 130 § 63; 1897 c 71 § 52; 1893 c 124 § 53; 1891 c 140 § 53; 1890 p 551 § 58; RRS § 11146.]

84.40.110 Examination under oath—Default listing. When the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete list of such property, he may examine such person under oath in regard to the amount of the property he is required to list, and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such person, or his principal, according to his best judgment and information. [1961 c 15 § 84.40.110. Prior: 1925 ex.s. c 130 § 24; 1897 c 71 § 17; 1893 c 124 § 17; 1891 c 140 § 17; 1890 p 535 § 15; Code 1881 § 2831; 1867 p 62 § 8; RRS § 11128.]

84.40.120 Oaths, who may administer—Criminal penalty for wilful false listing. Any oath authorized to be administered under this title may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person wilfully making a false list, schedule or statement under oath shall be liable as in case of perjury. [1961 c 15 § 84.40.120. Prior: 1925 ex.s. c 130 § 67; 1897 c 71 § 57;

1893 c 124 § 58; 1891 c 140 § 58; 1890 p 553 § 63; RRS § 11150.]

84.40.130 Penalty for failure or refusal to list—False or fraudulent listing, additional penalty. (1) If any person or corporation shall fail or refuse to deliver to the assessor, on or before the date specified in RCW 84.40.040, a list of the taxable personal property which he is required to list under this chapter, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount of tax assessed against him or it on account of such personal property five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues not exceeding twenty-five percent in the aggregate. Such penalty shall be collected in the same manner as the tax to which it is added.

(2) If any person or corporation shall wilfully give a false or fraudulent list, schedule or statement required by this chapter, or shall, with intent to defraud, fail or refuse to deliver any list, schedule or statement required by this chapter, such person or corporation shall be liable for the additional tax properly due or, in the case of wilful failure or refusal to deliver such list, schedule or statement, the total tax properly due; and in addition such person or corporation shall be liable for a penalty of one hundred percent of such additional tax or total tax as the case may be. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section. A person or corporation giving a false list, schedule or statement shall not be subject to this penalty if it is shown that the misrepresentations contained therein are entirely attributable to reasonable cause. The taxes and penalties provided for in this subsection shall be recovered in an action in the name of the state of Washington on the complaint of the county assessor or the board of county commissioners, and shall, when collected, be paid into the county treasury to the credit of the current expense fund. The provisions of this subsection shall be additional and supplementary to any other provisions of law relating to recovery of property taxes. [1967 ex.s. c 149 § 38; 1961 c 15 § 84.40.130. Prior: 1925 ex.s. c 130 § 51; 1897 c 71 § 41; 1893 c 124 § 41; 1891 c 140 § 41; 1890 p 546 § 45; Code 1881 § 2835; RRS § 11132.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.150 Sick or absent persons—May report to board of equalization. If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property, may, at any time before the close of the session of the board of equalization, make out and deliver to said board a statement of the same as required by this title, and the board shall, in such case, make an entry thereof, and correct

the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the said board from any person who refused or neglected to make oath to his statement when required by the assessor as provided herein; nor from any person unless he makes and files with the said board an affidavit that he was absent from his county, without design to avoid the listing of his property, or was prevented by sickness from giving the assessor the required statement when called on for that purpose. [1961 c 15 § 84.40.150. Prior: 1925 ex.s. c 130 § 66; 1897 c 71 § 55; 1893 c 124 § 56; 1891 c 141 § 56; 1890 p 553 § 62; RRS § 11149.]

84.40.160 Manner of listing real estate. The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot: *Provided*, That the assessor shall give to each tract of land where described by metes and bounds a number, to be designated as Tax No. -----, which said number shall be placed on the tax rolls to indicate that certain piece of real property bearing such number, and described by metes and bounds in the plat and description book herein mentioned, and it shall not be necessary to enter a description by metes and bounds on the tax roll of the county, and the assessor's plat and description book shall be kept as a part of the tax collector's records: *And provided, further*, That the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof, including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed "Total value of each tract, lot or block of land assessed with improvements as returned by the assessor." In carrying the values of said property into the column representing the equalized value thereof, the county assessor shall include and carry over in one item the equalized valuation of all lots in one block, or land in one section, listed consecutively, which belong to any one person, firm or corporation, and are situated within the same taxing district, and in the assessed value of which the county board of equalization has made no change. Where assessed valuations are changed, the equalized valuation must be extended and shown by item. [1961 c 15 § 84.40.160. Prior: 1925 ex.s. c 130 § 54; 1901 c 79 § 1; 1899 c 141 § 3; 1897 c 71 § 43; 1895 c 176 § 4; 1893 c 124 § 45; 1891 c 140 § 45; 1890 p 548 § 49; RRS § 11137.]

84.40.170 Plat of irregular subdivided tracts—Notice to owner—Surveys. In all cases of irregular

subdivided tracts or lots of land other than any regular government subdivision the county assessor shall outline a plat of such tracts or lots and notify the owner or owners thereof with a request to have the same surveyed by the county engineer, and cause the same to be platted into numbered (or lettered) lots or tracts: *Provided, however*, That where any county has in its possession the correct field notes of any such tract or lot of land a new survey shall not be necessary, but such tracts may be mapped from such field notes. In case the owner of such tracts or lots neglects or refuses to have the same surveyed or platted, the county assessor shall notify the board of county commissioners in and for the county, who may order and direct the county engineer to make the proper survey and plat of the tracts and lots. A plat shall be made on which said tracts or lots of land shall be accurately described by lines, and numbered (or lettered), which numbers (or letters) together with number of the section, township and range shall be distinctly marked on such plat, and the field notes of all such tracts or lots of land shall describe each tract or lot according to the survey, and such tract or lot shall be numbered (or lettered) to correspond with its number (or letter) on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field notes and name of plat, shall have been approved by the board of county commissioners, the plat and field notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number (or letter), section, township and range, shall be a sufficient and legal description for revenue and all other purposes. [1961 c 15 § 84.40.170. Prior: 1925 ex.s. c 130 § 53; 1901 c 124 §§ 1, 2, 3; 1891 c 140 § 45; RRS § 11136.]

84.40.175 Listing of exempt property—Proof of exemption—Valuation of publicly owned property. At the time of making the assessment of real property, the assessor shall enter each description of property exempt under the provisions of RCW 84.36.005 through 84.36.060, and value and list the same in the manner and subject to the same rule as he is required to assess all other property, designating in each case to whom such property belongs, and for what purpose used, to entitle it to exemption, and he shall require from every person claiming such exemption proof of the right to such exemption: *Provided*, That with respect to publicly owned property exempt from taxation under provisions of RCW 84.36.010, the assessor shall value only such property as is leased to or occupied by a private person under an agreement allowing such person to occupy or use such property for a private purpose when a request for such valuation is received from the department of revenue or the lessee of such property for use in determining the taxable rent as provided for in chapter 82.29A RCW: *Provided further*, That this section shall not prohibit any assessor from valuing any public property leased to or occupied by a private person for private purposes. [1986 c 285 § 3; 1975-'76 2nd ex.s. c 61 § 15; 1961 c 15 § 84.40.175. Prior: 1925 ex.s. c 130 § 9; 1891 c 140 § 5;

1890 p 532 § 5; RRS § 11113. Formerly RCW 84.36.220.]

Effective date—Severability—1975-'76 2nd ex.s. c 61: See RCW 82.29A.900 and 82.29A.910.

Leasehold excise tax: Chapter 82.29A RCW.

84.40.185 Individuals, corporations, associations, partnerships, trusts or estates required to list personalty. Every individual, corporation, association, partnership, trust, or estate shall list all personal property in his or its ownership, possession, or control which is subject to taxation pursuant to the provisions of this title. Such listing shall be made and delivered in accordance with the provisions of *this 1967 amendatory act. [1967 ex.s. c 149 § 41.]

***Reviser's note:** "This 1967 amendatory act" [1967 ex.s. c 149] consists of the 1967 amendments to RCW 28.45.035, 28.45.040, 82.04.050, 82.04.130, 82.04.190, 82.04.230 through 82.04.290, 82.04.410, 82.04.440, 82.08.010 through 82.08.030, 82.12.020, 82.12.030, 82.16.020, 82.16.050, 82.32.090, 82.48.020, 82.50.010 through 82.50.050, 82.50.070, 82.50.101, 82.50.105, 82.50.110 through 82.50.140, 82.50.180 through 82.50.200, 83.44.010, 84.08.030, 84.36.010, 84.36.150, 84.36.171, 84.40.020, 84.40.040, 84.40.060, 84.40.130, 84.40.190, and 84.40.340; the enactment of RCW 28.45.105, 28.45.120, 82.04.432, 82.50.185, 82.50.250, 82.50.260, 82.98.035, 84.36.176, 84.36.260, 84.40.185, and 84.40.335; and the repeal of RCW 82.04.295, 82.04.296, 82.16.025, 82.16.026, 84.40.050, 84.40.140, 84.40.180, and 84.40.260.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.190 Statement of personalty to be delivered to assessor—Signatures—Liability. Every person required by this title to list property shall make out and deliver to the assessor, either in person or by mail, a statement, verified under penalty of perjury, of all the personal property in his possession or under his control, and which, by the provisions of this title, he is required to list for taxation, either as owner or holder thereof. Each list, schedule or statement required by this chapter shall be signed by the individual if the person required to make the same is an individual; by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act if the person required to make the same is a corporation; by a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the same is a partnership or other unincorporated organization; or by the fiduciary, if the person required to make the same is a trust or estate. The list, schedule, or statement may be made and signed for the person required to make the same by an agent who is duly authorized to do so by a power of attorney filed with and approved by the assessor. When any list, schedule, or statement is made and signed by such agent, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be liable for the penalties imposed pursuant to RCW 84.40.130. No person shall be required to list for taxation in his statement to the assessor any share or

portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the department of revenue, or as otherwise required by law. [1967 ex.s. c 149 § 39; 1961 c 15 § 84.40.190. Prior: 1945 c 56 § 1; 1925 ex.s. c 130 § 22; 1897 c 71 § 15; 1893 c 124 § 15; 1891 c 140 § 15; 1890 p 535 § 15; Code 1881 § 2834; Rem. Supp. 1945 § 11126.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.200 Listing of personalty on failure to obtain statement—Statement of valuation to person assessed or listing. (1) In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property and assess the same at such amount as he believes to be the true value thereof.

(2) The assessor, in all cases of the assessment of personal property, shall deliver or mail to the person assessed, or to the person listing the property, a copy of the statement of property hereinbefore required, showing the valuation of the property so listed. [1987 c 319 § 3; 1961 c 15 § 84.40.200. Prior: 1939 c 206 § 18; 1925 ex.s. c 130 § 64; 1897 c 71 § 53; 1893 c 124 § 54; 1891 c 140 § 54; 1890 p 551 § 59; RRS § 11147.]

84.40.210 Personalty of manufacturer, listing procedure, statement—"Manufacturer" defined. Every person who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing shall be held to be a manufacturer, and he shall, when required to, make and deliver to the assessor a statement of the amount of his other personal property subject to taxes, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind and every manufacturer shall list as part of his manufacturer's stock the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing except such fixtures as have been considered as part of any parcel of real property, including all tools and implements of every kind, used or designed to be used for the first aforesaid purpose. [1961 c 168 § 1; 1961 c 15 § 84.40.210. Prior: 1939 c 66 § 1; 1927 c 282 § 1; 1925 ex.s. c 130 § 26; 1921 c 60 § 1; 1897 c 71 § 19; 1893 c 124 § 19; 1891 c 140 § 19; 1890 p 538 § 20; RRS § 11130.]

84.40.220 Merchant's personalty held for sale—Consignment from out of state—Nursery stock assessable as growing crops. Whoever owns, or has in his possession or subject to his control, any goods, merchandise, grain or produce of any kind, or other personal property within this state, with authority to sell the same, which has been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which has been consigned to him from any place out of this state for the purpose of being sold at any place within the state, shall be held to be a merchant, and when he is by this title required to make out and to deliver to the assessor a statement of his other personal property, he shall state the value of such property pertaining to his business as a merchant. No consignee shall be required to list for taxation the value of any property the product of this state, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded, if he has no interest in such property nor any profit to be derived from its sale. The growing stock of nurserymen, which is owned by the original producer thereof or which has been held or possessed by the nurserymen for one hundred eighty days or more, shall, whether personal or real property, be considered the same as growing crops on cultivated lands: *Provided*, That the nurserymen be licensed by the department of agriculture: *Provided further*, That an original producer, within the meaning of this section, shall include a person who, beginning with seeds, cuttings, bulbs, corms, or any form of immature plants, grows such plants in the course of their development into either a marketable partially grown product or a marketable consumer product. [1974 ex.s. c 83 § 1; 1971 ex.s. c 18 § 1; 1961 c 15 § 84.40.220. Prior: 1939 c 116 § 1; 1925 ex.s. c 130 § 25; 1897 c 71 § 18; 1893 c 124 § 18; 1891 c 140 § 18; 1890 p 537 § 19; Code 1881 § 2839; RRS § 11129. Formerly RCW 84.40.030, part, and 84.40.220.]

84.40.230 Contract to purchase public land. When any real property is sold on contract by the United States of America, the state, or any county or municipality, and such contract expresses or implies that the vendee is entitled to the possession, use, benefits and profits thereof and therefrom so long as he complies with the terms of such contract, it shall be deemed that the vendor retains title merely as security for the fulfillment of the contract, and such property shall be assessed and taxed in the same manner as other similar property in private ownership is taxed, and the tax roll shall contain, opposite the description of the property so assessed the following notation: "Subject to title remaining in the vendor" or other notation of similar significance. No foreclosure for delinquent taxes nor any deed issued pursuant thereto shall extinguish or otherwise affect the title of the vendor. In any case under former law where the contract and not the property was taxed no deed of the property described in such contract shall ever be executed and delivered by the state or any county or municipality until all taxes assessed against such contract and local assessments assessed against the land described

thereon are fully paid. [1961 c 15 § 84.40.230. Prior: 1947 c 231 § 1; 1941 c 79 § 1; 1925 ex.s. c 137 § 33; 1897 c 71 § 26; 1893 c 124 § 26; 1891 c 140 § 26; 1890 p 540 § 25; Rem. Supp. 1947 § 11133.]

84.40.240 Annual list of lands sold or contracted to be sold to be furnished assessor. The assessor of each county shall, on or before the first day of January of each year, obtain from the department of natural resources, and from the local land offices of the state, lists of public lands sold or contracted to be sold during the previous year in his county, and certify them for taxation, together with the various classes of state lands sold during the same year, and it shall be the duty of the department of natural resources to certify a list or lists of all public lands sold or contracted to be sold during the previous year, on application of the assessor of any county applying therefor. [1961 c 15 § 84.40.240. Prior: 1939 c 206 § 10; 1925 ex.s. c 130 § 10; 1897 c 71 § 91; 1893 c 124 § 94; 1891 c 140 § 26; 1890 p 540 § 25; RRS § 11114.]

84.40.250 Improvements on public lands assessed as personalty until final proof and certificate. The assessor must assess all improvements on public lands as personal property until the settler thereon has made final proof. After final proof has been made, and a certificate issued therefor, the land itself must be assessed, notwithstanding the patent has not been issued. [1961 c 15 § 84.40.250. Prior: 1925 ex.s. c 130 § 34; 1897 c 71 § 27; 1893 c 124 § 27; 1890 p 540 § 24; RRS § 11134.]

84.40.315 Federal agencies and property taxable when federal law permits. Notwithstanding the provisions of RCW 84.36.010 or anything to the contrary in the laws of the state of Washington, expressed or implied, the United States and its agencies and instrumentalities and their property are hereby declared to be taxable, and shall be taxed under the existing laws of this state or any such laws hereafter enacted, whenever and in such manner as such taxation may be authorized or permitted under the laws of the United States. [1961 c 15 § 84.40.315. Prior: 1945 c 142 § 1; Rem. Supp. 1945 § 11150-1. Formerly RCW 84.08.180.]

84.40.320 Detail and assessment lists to board of equalization. The assessor shall add up and note the amount of each column in his detail and assessment lists, which he shall have bound in book form in such manner, to be prescribed or approved by the state department of revenue, as will provide a convenient and permanent record of assessment. He shall also make, under proper headings, a tabular statement showing the footings of the several columns upon each page, and shall add and set down under the respective headings the total amounts of each column, which he shall attach to the highest numbered assessment book, and on the first Monday of July he shall file the same, properly indexed, with the clerk of the county board of equalization for the purpose of equalization by the said board. Such returns

shall be verified by his affidavit, substantially in the following form:

State of Washington, ----- County, ss.

I, -----, Assessor -----, do solemnly swear that the books No. 1 to No. -----, to the last of which this is attached, contain a correct and full list of all the real property (or personal property, as the case may be) subject to taxation in ----- county, so far as I have been able to ascertain the same; and that the assessed value set down in the proper column, opposite the several kinds and descriptions of property, is in each case one hundred percent of the true and fair value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said books, and the tabular statement returned herewith, are correct, as I verily believe.

-----, Assessor.

Subscribed and sworn to before me this ----- day of -----, 19---

(L. S.) -----, Auditor of ----- county.

Provided, That the failure of the assessor to attach his certificate shall in nowise invalidate the assessment. After the same has been duly equalized by the county and state board of equalization, the same shall be delivered to the county assessor, who shall then extend the amount as levied by the state and county boards upon the said detail and assessment lists as by law provided. [1975 1st ex.s. c 278 § 195; 1973 1st ex.s. c 195 § 98; 1961 c 15 § 84.40.320. Prior: 1937 c 121 § 1; 1925 ex.s. c 130 § 65; 1897 c 71 § 54; 1893 c 124 § 55; 1891 c 140 § 55; 1890 p 552 § 60; RRS § 11148.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.40.330 Assessor to furnish department of revenue list of businesses of public character. It shall be the duty of the county assessor, on the completion of his assessment rolls each year, to furnish the department of revenue a list of corporations, companies, associations, banks and individuals doing business of a public character whose assessed valuation is three thousand dollars or more, together with the class of property and the valuation placed on same for assessment purposes. [1975 1st ex.s. c 278 § 196; 1961 c 15 § 84.40.330. Prior: 1939 c 206 § 5, part; 1935 c 127 § 1, part; 1907 c 220 § 1, part; 1905 c 115 § 2, part; RRS § 11091 (second), part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.40.335 Lists, schedules or statements to contain declaration that falsification subject to perjury. Any list, schedule or statement required by this chapter shall contain a written declaration that any person signing the same and knowing the same to be false shall be subject to the penalties of perjury. [1967 ex.s. c 149 § 42.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

(1987 Ed.)

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.340 Verification by assessor of any list, statement, or schedule—Confidentiality, penalty. For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his trained and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: *Provided*, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a court action pertaining to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision shall constitute a gross misdemeanor. [1973 1st ex.s. c 74 § 1; 1967 ex.s. c 149 § 40; 1961 ex.s. c 24 § 6.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.343 Mobile homes—Identification of. In the assessment of any mobile home, the assessment record shall contain a description of the mobile home including the make, model, and serial number. The property tax roll shall identify any mobile home. [1985 c 395 § 8.]

84.40.344 Mobile homes—Avoidance of payment of tax—Penalty. Every person who wilfully avoids the payment of personal property taxes on mobile homes subject to such tax under the laws of this state shall be guilty of a misdemeanor. [1971 ex.s. c 299 § 75.]

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

84.40.350 Assessment and taxation of property losing exempt status. Real property, previously exempt from taxation, shall be assessed and taxed as provided in RCW 84.40.350 through 84.40.390 when transferred to

private ownership by any exempt organization including the United States of America, the state or any political subdivision thereof by sale or exchange or by a contract under conditions provided for in RCW 84.40.230 or when the property otherwise loses its exempt status. [1984 c 220 § 13; 1971 ex.s. c 44 § 2.]

84.40.360 Loss of exempt status—Property subject to pro rata portion of taxes for remainder of year. Property which no longer retains its exempt status shall be subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date that the property lost its exempt status. If a portion of the property has lost its exempt status, only that portion shall be subject to tax under this section. [1984 c 220 § 14; 1971 ex.s. c 44 § 3.]

84.40.370 Loss of exempt status—Valuation date—Extension on rolls. The assessor shall list the property and assess it with reference to its value on the date the property lost its exempt status unless such property has been previously listed and assessed. He shall extend the taxes on the tax roll using the rate of percent applicable as if the property had been assessed in the previous year. [1984 c 220 § 15; 1971 ex.s. c 44 § 4.]

84.40.380 Loss of exempt status—When taxes due and payable—Dates of delinquency—Interest. All taxes made payable pursuant to the provisions of RCW 84.40.350 through 84.40.390 shall be due and payable to the county treasurer on or before the thirtieth day of April in the event the date of execution of the instrument of transfer occurs prior to that date unless the time of payment is extended under the provisions of RCW 84.56.020. Such taxes shall be due and payable on or before the thirty-first day of October in the event the date the property lost its exempt status is subsequent to the thirtieth day of April but prior to the thirty-first day of October. In all other cases such taxes shall be due and payable within thirty days after the date the property lost its exempt status. In no case, however, shall the taxes be due and payable less than thirty days from the date the property lost its exempt status. All taxes due and payable after the dates herein shall become delinquent, and interest at the rate specified in RCW 84.56.020 for delinquent property taxes shall be charged upon such unpaid taxes from the date of delinquency until paid. [1984 c 220 § 16; 1971 ex.s. c 44 § 5.]

84.40.390 Loss of exempt status—Taxes constitute lien on property. Taxes made due and payable under RCW 84.40.350 through 84.40.390 shall be a lien on the property from the date the property lost its exempt status. [1984 c 220 § 17; 1971 ex.s. c 44 § 6.]

84.40.405 Business inventories, agricultural property taxes—Credits, exemptions—Rules and regulations, procedures. The department of revenue shall promulgate

such rules and regulations, and prescribe such procedures as it deems necessary to carry out RCW 82.04.444, 82.04.445, 84.36.470, 84.36.473, 84.36.475, 84.36.477, 84.09.080, and 84.52.015, and this section. [1985 c 7 § 156; 1983 1st ex.s. c 62 § 10; 1974 ex.s. c 169 § 9.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

Severability—Effective date—Intent—1974 ex.s. c 169: See notes following RCW 82.04.444.

Chapter 84.40A

LISTING OF LEASEHOLD ESTATES

Sections

- 84.40A.010 Basis of valuation—Criterion of value—Factors—Growing crops excluded—Mines, quarries—Leasehold estates.
 84.40A.020 Prospective and retroactive application.
 84.40A.030 Corrections in assessments of leasehold estates.
 84.40A.040 Study of assessment and valuation of leasehold estates.
 84.40A.050 Modification of existing leases.
 84.40A.900 Severability—1971 ex.s. c 43.

84.40A.010 Basis of valuation—Criterion of value—Factors—Growing crops excluded—Mines, quarries—Leasehold estates. See RCW 84.40.030.

84.40A.020 Prospective and retroactive application. *This 1971 amendatory act shall apply both prospectively and retroactively. [1971 ex.s. c 43 § 2.]

***Reviser's note:** "This 1971 amendatory act" [1971 ex.s. c 43] consists of the enactment of this chapter and the amendment to RCW 84.40.030 by 1971 ex.s. c 43.

84.40A.030 Corrections in assessments of leasehold estates. The county assessor and the county board of equalization in each county shall make any corrections in any assessments heretofore or hereafter made of such estates in their respective counties which may be necessary in order to make the assessments conform with the provisions of *this 1971 amendatory act. All such corrections shall be made by the county assessors and the county board of equalization in accordance with the procedures set forth in RCW 84.56.400. [1971 ex.s. c 43 § 3.]

***Reviser's note:** For "this 1971 amendatory act", see note following RCW 84.40A.020.

84.40A.040 Study of assessment and valuation of leasehold estates. The legislative council in conjunction with the department of revenue shall review methods and procedures for the assessment and valuation of taxable leasehold estates and shall present recommendations with respect thereto to the legislature, not later than the next regular session. [1971 ex.s. c 43 § 4.]

84.40A.050 Modification of existing leases. A state agency, municipal corporation, or political subdivision (hereinafter referred to as "public lessor") which has entered into, prior to April 30, 1971, as lessor, a lease of

real or personal property (including any permit, concession agreement or other type of agreement essentially comparable to a lease) may agree to a modification of the provisions of such lease in order to allow, in whole or in part, the absorption by the public lessor of any property tax imposed upon the leasehold interest, if the lessee agrees to a suitable modification of the provisions of such lease with respect to the duration or other terms of such lease for the benefit of the public lessor; and for the purpose of allowing such modifications with respect to the duration of the lease a public lessor is authorized, if it finds it to be beneficial to itself, to extend the term of such lease for a period not to exceed five years beyond any otherwise applicable statutory limitation. [1971 ex.s. c 43 § 5.]

84.40A.900 Severability—1971 ex.s. c 43. See note following RCW 84.40.030.

Chapter 84.41

REVALUATION OF PROPERTY

Sections

- 84.41.010 Declaration of policy.
- 84.41.020 Scope of chapter.
- 84.41.030 Revaluation program to be on continuous basis—Revaluation schedule.
- 84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data.
- 84.41.050 Budget, levy, to provide funds.
- 84.41.060 Assistance by department of revenue at request of assessor.
- 84.41.070 Finding of unsatisfactory progress—Notice—Duty of county commissioners.
- 84.41.080 Contracts for special assistance.
- 84.41.090 Department to establish statistical methods—Publication of rules, regulations, and guides—Compliance required.
- 84.41.100 Assessor may appoint deputies and engage expert appraisers.
- 84.41.110 Appraisers to act in advisory capacity.
- 84.41.120 Assessor to keep records—Orders of department of revenue, compliance enjoined, remedies.
- 84.41.130 Assessor's annual reports.

84.41.010 Declaration of policy. Recent comprehensive studies by the legislative council have disclosed gross inequality and nonuniformity in valuation of real property for tax purposes throughout the state. Serious nonuniformity in valuations exists both between similar property within the various taxing districts and between general levels of valuation of the various counties. Such nonuniformity results in inequality in taxation contrary to standards of fairness and uniformity required and established by the Constitution and is of such flagrant and widespread occurrence as to constitute a grave emergency adversely affecting state and local government and the welfare of all the people.

Traditional public policy of the state has vested large measure of control in matters of property valuation in county government, and the state hereby declares its purpose to continue such policy. However, present statutes and practices thereunder have failed to achieve the measure of uniformity required by the Constitution; the

resultant widespread inequality and nonuniformity in valuation of property can and should no longer be tolerated. It thus becomes necessary to require general revaluation of property throughout the state. [1961 c 15 § 84.41.010. Prior: 1955 c 251 § 1.]

84.41.020 Scope of chapter. This chapter does not, and is not intended to affect procedures whereby taxes are imposed either for local or state purposes. This chapter concerns solely the administrative procedures by which the true and fair value in money of property is determined. The process of valuation, which is distinct and separate from the process of levying and imposing a tax, does not result either in the imposition of a tax or the determination of the amount of a tax. This chapter is intended to, and applies only to procedures and methods whereby the value of property is ascertained. [1961 c 15 § 84.41.020. Prior: 1955 c 251 § 2.]

84.41.030 Revaluation program to be on continuous basis—Revaluation schedule. Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county at least once each four years and physical inspection of all taxable real property within the county at least once each six years. [1982 1st ex.s. c 46 § 1; 1971 ex.s. c 288 § 6; 1961 c 15 § 84.41.030. Prior: 1955 c 251 § 3.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data. Each county assessor shall cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan shall provide that a reasonable portion of all taxable real property within a county shall be revalued and these newly-determined values placed on the assessment rolls each year. The department may approve a plan that provides that all property in the county be revalued every two years. If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.

The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said property within the past five years, the cost and

characteristics of any improvement on the property and other facts necessary for appraisal of the property. [1987 c 319 § 4; 1982 1st ex.s. c 46 § 2; 1979 ex.s. c 214 § 9; 1974 ex.s. c 131 § 2.]

84.41.050 Budget, levy, to provide funds. Each county assessor in budgets hereafter submitted, shall make adequate provision to effect county-wide revaluations as herein directed. The several boards of county commissioners in passing upon budgets submitted by the several assessors, shall authorize and levy amounts which in the judgment of the board will suffice to carry out the directions of this chapter. [1961 c 15 § 84.41.050. Prior: 1955 c 251 § 5.]

84.41.060 Assistance by department of revenue at request of assessor. Any county assessor may request special assistance from the department of revenue in the valuation of property which either (1) requires specialized knowledge not otherwise available to the assessor's staff, or (2) because of an inadequate staff, cannot be completed by the assessor within the time required by this chapter. After consideration of such request the department of revenue shall advise the assessor that such request is either approved or rejected in whole or in part. Upon approval of such request, the department of revenue may assist the assessor in the valuation of such property in such manner as the department of revenue, in its discretion, considers proper and adequate. [1975 1st ex.s. c 278 § 197; 1961 c 15 § 84.41.060. Prior: 1955 c 251 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.070 Finding of unsatisfactory progress—Notice—Duty of county commissioners. If the department of revenue finds upon its own investigation, or upon a showing by others, that the revaluation program for any county is not proceeding for any reason as herein directed, or is not proceeding for any reason with sufficient rapidity to be completed before June 1, 1958, the department of revenue shall advise both the board of county commissioners and the county assessor of such finding. Within thirty days after receiving such advice, the board of county commissioners, at regular or special session, either (1) shall authorize such expenditures as will enable the assessor to complete the revaluation program as herein directed, or (2) shall direct the assessor to request special assistance from the department of revenue for aid in effectuating the county's revaluation program. [1975 1st ex.s. c 278 § 198; 1961 c 15 § 84.41.070. Prior: 1955 c 251 § 7.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.080 Contracts for special assistance. Upon receiving a request from the county assessor, either upon his initiation or at the direction of the board of county commissioners, for special assistance in the county's revaluation program, the department of revenue may, before undertaking to render such special assistance,

negotiate a contract with the board of county commissioners of the county concerned. Such contracts as are negotiated shall provide that the county will reimburse the state for fifty percent of the costs of such special assistance within three years of the date of expenditure of such costs. All such reimbursements shall be paid to the department of revenue for deposit to the state general fund. The department of revenue shall keep complete records of such contracts, including costs incurred, payments received, and services performed thereunder. [1975 1st ex.s. c 278 § 199; 1961 c 15 § 84.41.080. Prior: 1955 c 251 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.090 Department to establish statistical methods—Publication of rules, regulations, and guides—Compliance required. The department of revenue shall by rule establish appropriate statistical methods for use by assessors in adjusting the valuation of property between physical inspections. The department of revenue shall make and publish such additional rules, regulations and guides which it determines are needed to supplement materials presently published by the department of revenue for the general guidance and assistance of county assessors. Each assessor is hereby directed and required to value property in accordance with the standards established by RCW 84.40.030 and in accordance with the applicable rules, regulations and valuation manuals published by the department of revenue. [1982 1st ex.s. c 46 § 3; 1975 1st ex.s. c 278 § 200; 1961 c 15 § 84.41.090. Prior: 1955 c 251 § 9.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.100 Assessor may appoint deputies and engage expert appraisers. See RCW 36.21.011.

84.41.110 Appraisers to act in advisory capacity. Appraisers whose services may be obtained by contract or who may be assigned by the department of revenue to assist any county assessor shall act in an advisory capacity only, and valuations made by them shall not in any manner be binding upon the assessor, it being the intent herein that all valuations made pursuant to this chapter shall be made and entered by the assessor pursuant to law as directed herein. [1975 1st ex.s. c 278 § 201; 1961 c 15 § 84.41.110. Prior: 1955 c 251 § 11.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.120 Assessor to keep records—Orders of department of revenue, compliance enjoined, remedies. Each county assessor shall keep such books and records as are required by the rules and regulations of the department of revenue and shall comply with any lawful order, rule or regulation of the department of revenue.

Whenever it appears to the department of revenue that any assessor has failed to comply with any of the provisions of this chapter relating to his duties or the rules of the department of revenue made in pursuance

thereof, the department of revenue, after a hearing on the facts, may issue an order directing such assessor to comply with such provisions of this chapter or rules of the department of revenue. Such order shall be mailed by registered mail to the assessor at the county court house. If, upon the expiration of fifteen days from the date such order is mailed, the assessor has not complied therewith or has not taken measures that will insure compliance within a reasonable time, the department of revenue may apply to a judge of the superior court or court commissioner of the county in which such assessor holds office, for an order returnable within five days from the date thereof to compel him to comply with such provisions of law or of the order of the department of revenue or to show cause why he should not be compelled so to do. Any order issued by the judge pursuant to such order to show cause shall be final. The remedy herein provided shall be cumulative and shall not exclude the department of revenue from exercising any powers or rights otherwise granted. [1975 1st ex.s. c 278 § 202; 1961 c 15 § 84.41.120. Prior: 1955 c 251 § 12.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.41.130 Assessor's annual reports. Each county assessor, before October 15th each year, shall prepare and submit to the department of revenue a detailed report of the progress made in the revaluation program in his county to the date of the report and be made a matter of public record. Such report shall be submitted upon forms supplied by the department of revenue and shall consist of such information as the department of revenue requires. The department of revenue shall transmit a copy of such report to the legislature. [1975 1st ex.s. c 278 § 203; 1961 c 15 § 84.41.130. Prior: 1955 c 251 § 13.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.44 TAXABLE SITUS

Sections	
84.44.010	Situs of personalty generally—Personalty of merchant or manufacturer.
84.44.020	Gas, electric, water companies—Mains and pipes, as personalty.
84.44.030	Lumber and sawlogs.
84.44.040	Personalty of road or bridge companies—Road or bridge as personalty.
84.44.050	Personalty of automobile transportation companies—Vessels, boats and small craft.
84.44.060	Personalty connected with farm when owner doesn't reside thereon—Certain agricultural property exempt.
84.44.070	Migratory stock.
84.44.080	Owner moving into state or to another county after January 1st.
84.44.090	Disputes over situs to be determined by department of revenue.

84.44.010 Situs of personalty generally—Personalty of merchant or manufacturer. Personal property, except such as is required in this title to be listed and

assessed otherwise, shall be listed and assessed in the county where it is situated. The personal property pertaining to the business of a merchant or of a manufacturer shall be listed in the town or place where his business is carried on. [1961 c 15 § 84.44.010. Prior: 1925 ex.s. c 130 § 16; RRS § 11120; prior: 1897 c 71 § 9; 1893 c 124 § 9; 1891 c 140 § 9; 1890 p 533 § 8; 1871 p 39 § 9; 1869 p 179 § 9.]

84.44.020 Gas, electric, water companies—Mains and pipes, as personalty. The personal property of gas, electric and water companies shall be listed and assessed in the town or city where the same is located. Gas and water mains and pipes laid in roads, streets or alleys, shall be held to be personal property. [1961 c 15 § 84.44.020. Prior: 1925 ex.s. c 130 § 18; RRS § 11122; prior: 1897 c 71 § 11; 1893 c 124 § 11; 1891 c 140 § 11; 1890 p 534 § 10.]

84.44.030 Lumber and sawlogs. Lumber and sawlogs shall be assessed and taxed in the county and taxing district where the same may be situated at noon on the first day of January of the assessment year: *Provided*, That if any lumber or sawlogs shall, at said time, be in intra-state transit from one point to another within the state, the same shall be assessed and taxed in the county and taxing districts of their destination. [1961 c 15 § 84.44.030. Prior: 1941 c 155 § 1; 1939 c 206 § 12; 1925 ex.s. c 130 § 13; Rem. Supp. 1941 § 11117; prior: 1907 c 108 § 3.]

84.44.040 Personalty of road or bridge companies—Road or bridge as personalty. The personal property of plank road, gravel road, turnpike or bridge companies, shall be listed and assessed in the county, town or city where the same is located, and the road or bridge shall be held to be personal property. [1961 c 15 § 84.44.040. Prior: 1925 ex.s. c 130 § 19; RRS § 11123; prior: 1897 c 71 § 12; 1893 c 124 § 12; 1891 c 140 § 12; 1890 p 534 § 11; Code 1881 § 2843.]

84.44.050 Personalty of automobile transportation companies—Vessels, boats and small craft. The personal property of automobile transportation companies owning, controlling, operating or managing any motor propelled vehicle used in the business of transporting persons and/or property for compensation over any public highway in this state between fixed termini or over a regular route, shall be listed and assessed in the various counties where such vehicles are operated, in proportion to the mileage of their operations in such counties: *Provided*, That such vehicles shall not be listed or assessed for ad valorem taxation so long as chapter 82.44 RCW remains in effect. All vessels of every class which are by law required to be registered, licensed or enrolled, must be assessed and the taxes thereon paid only in the county of their actual situs: *Provided*, That such interest shall be taxed but once. All boats and small craft not required to be registered must be assessed in the county of their actual situs. [1961 c 15 § 84.44.050. Prior: 1925 ex.s. c

130 § 17; RRS § 11121; prior: 1897 c 71 § 10; 1893 c 124 § 10; 1891 c 140 § 10; 1890 p 533 § 9.]

Assessment of steamboat companies, etc.: Chapter 84.12 RCW.

84.44.060 Personalty connected with farm when owner doesn't reside thereon—Certain agricultural property exempt. When the owner of livestock or other personal property connected with a farm does not reside thereon, the property shall be listed and assessed in the county or place where the farm is situated; if not listed in said county, then to be taxed where found. All agricultural and horticultural products other than forest products, livestock and fowls, ownership of which remains in the original producer thereof on the first day of January next succeeding the harvesting thereof shall be exempt from assessment for taxation for the said year. [1961 c 15 § 84.44.060. Prior: 1939 c 206 § 14; 1933 c 48 § 1; 1925 ex.s. c 130 § 20; RRS § 11124; prior: 1897 c 71 § 13; 1893 c 124 § 13; 1891 c 140 § 13; 1890 p 534 § 12. Formerly RCW 84.36.200 and 84.44.060.]

84.44.070 Migratory stock. When any cattle, horses, sheep or goats are driven into any county of this state for the purposes of grazing therein at any time after the first day of January in any year, they shall be liable to be assessed for all taxes leviable in that county for that year the same as if they had been in the county at the time of the annual assessment, and it shall be the duty of the assessor in any county in which any of said stock are driven, to assess the same, and the taxes on said stock shall become due upon the assessment of the same, and the county treasurer shall collect said taxes at once in the manner prescribed by law for the collection of delinquent taxes: *Provided*, That such stock has not been assessed in some other county in this state for that year: *Provided further*, That upon demand of the county assessor of any county from or into which such stock may be driven for purposes of grazing, which demand must be made before July 1st of the assessment year, the total assessment of such stock shall be prorated between the home county of the stock and any other county or counties into which it may be driven for the purposes of grazing in proportion to the periods of time such stock is or will be physically situate in such respective counties; but no county shall be entitled to share in the assessment of grazing stock under this provision unless such stock shall have been physically situate in such county for a period of sixty days or more. The payment of taxes in any other state or territory, or the proof that said stock has been assessed for that year in any other state or territory, shall in no way exempt said stock from the operation of this section. [1961 c 15 § 84.44.070. Prior: 1939 c 206 § 11; 1925 ex.s. c 130 § 12; RRS § 11116; prior: 1895 c 61 § 1; 1886 p 94 § 1.]

84.44.080 Owner moving into state or to another county after January 1st. The owner of personal property removing from one county to another between the first day of January and the first day of July shall be assessed in either in which he is first called upon by the assessor.

The owner of personal property moving into this state from another state between the first day of January and the first day of July shall list the property owned by him on the first day of January of such year in the county in which he resides: *Provided*, That if such person has been assessed and can make it appear to the assessor that he is held for the tax of the current year on the property in another state or county, he shall not be again assessed for such year. [1961 c 15 § 84.44.080. Prior: 1939 c 206 § 13; 1925 ex.s. c 130 § 14; RRS § 11118; prior: 1891 c 140 § 7; 1890 p 534 § 13.]

84.44.090 Disputes over situs to be determined by department of revenue. In all questions that may arise under this title as to the proper place to list personal property, or where the same cannot be listed as stated in this title, if between several places in the same county, or between different counties, or places in different counties, the place for listing and assessing shall be determined and fixed by the department of revenue; and when fixed in either case shall be as binding as if fixed by this title. [1975 1st ex.s. c 278 § 205; 1961 c 15 § 84.44.090. Prior: 1925 ex.s. c 130 § 21; RRS § 11125; prior: 1897 c 71 § 14; 1893 c 124 § 14; 1891 c 140 § 14; 1890 p 535 § 14.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.48

EQUALIZATION OF ASSESSMENTS

Sections

- 84.48.010 County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited.
- 84.48.014 County board of equalization—Composition of board—Appointment—Qualifications.
- 84.48.018 County board of equalization—Chairman—Quorum.
- 84.48.022 County board of equalization—Meetings.
- 84.48.026 County board of equalization—Terms—Removal.
- 84.48.028 County board of equalization—Clerk—Assistants.
- 84.48.032 County board of equalization—Appraisers.
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- 84.48.038 County board of equalization—Legal advisor.
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- 84.48.050 Abstract of rolls to state auditor—State action if assessor does not transmit, when.
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- 84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Record.
- 84.48.110 Transcript of proceedings to county assessors—Delinquent tax for certain preceding years included.
- 84.48.120 Extension of state taxes.
- 84.48.130 Certification of assessed valuation to taxing districts.
- 84.48.140 Property tax advisor.
- 84.48.150 Valuation criteria including comparative sales to be made available to taxpayers.

84.48.010 County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited. Prior to July 1st, the county legislative authority shall form a board for the equalization of the assessment of the property of the county. The members of said board may receive up to fifty dollars per day for each day of actual attendance of the meeting of the board of equalization to be paid out of the current expense fund of the county: *Provided*, That when the county legislative authority constitute the board they shall not receive the per diem allowance. The board of equalization shall meet in open session for this purpose annually on the first Monday in July and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules:

First. They shall raise the valuation of each tract or lot or item of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot or item which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual, to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, reduce the valuation of each class of personal property enumerated on the detail and assessment list of the current year, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individual who, in their opinion, has been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

Fifth. The board may review all claims for either real or personal property tax exemption, and shall consider any taxpayer appeals from the decision of the assessor thereon to determine (1) if the taxpayer is entitled to an exemption, and (2) if so, the amount thereof.

The clerk of the board shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of county legislative authority, and shall make a true record of the changes of the descriptions and assessed values ordered by the county board of equalization. The assessor shall correct the real and personal assessment rolls in accordance with the changes made by the said county board of equalization, and he shall make duplicate abstracts of such corrected values, one copy of which shall be retained in his office, and one copy forwarded to the state board of equalization on or before the fifth day of August next following the meeting of the county board of equalization.

The county board of equalization shall meet on the first Monday in July and may continue in session and adjourn from time to time during a period not to exceed four weeks, but shall remain in session not less than three days: *Provided*, That, in addition to the several times fixed by statute, any county board of equalization may be reconvened for special or general purposes, but not later than three years after the date of adjournment of its regularly convened session by order of the department of revenue: *Provided, further*, That the county board of equalization with the approval of the county legislative authority may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater.

No taxes, except special taxes, shall be extended upon the tax rolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue.

County legislative authorities as such shall at no time have any authority to change the valuation of the property of any person or to release or commute in whole or in part the taxes due on the property of any person. [1979 c 13 § 1. Prior: 1977 ex.s. c 290 § 2; 1977 c 33 § 1; 1970 ex.s. c 55 § 2; 1961 c 15 § 84.48.010; prior: 1939 c 206 § 35; 1925 ex.s. c 130 § 68; RRS § 11220; prior: 1915 c 122 § 1; 1907 c 129 § 1; 1897 c 71 § 58; 1893 c 124 § 59; 1890 p 555 § 73; Code 1881 §§ 2873-2879. Formerly RCW 84.48.010, 84.48.020, 84.48.030, 84.48.040 and 84.48.060.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.014 County board of equalization—Composition of board—Appointment—Qualifications. The board of equalization of each county shall consist of not less than three nor more than seven members. Such members shall be appointed by a majority of the board of county commissioners or like other county governmental authority, and shall be selected for their knowledge of the values of property in the county and shall not be a holder of any elective office nor be an employee of any elected official: *Provided, however*, The county commissioners may themselves constitute the board at their discretion. [1970 ex.s. c 55 § 3.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.018 County board of equalization—Chairman—Quorum. The members of each board of equalization shall meet and choose a chairman. A majority of the board shall constitute a quorum. [1970 ex.s. c 55 § 4.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.022 County board of equalization—Meetings. All meetings of the board of equalization shall be held at the county courthouse, or other suitable place within the county, and the board of county commissioners shall make provision for a suitable meeting place. [1970 ex.s. c 55 § 5.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.026 County board of equalization—Terms—Removal. The terms of each appointed member of the board shall be for three years or until their successors are appointed: *Provided, however,* Each appointed member may be removed by a majority vote of the county commissioners or other county legislative body. [1970 ex.s. c 55 § 6.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.028 County board of equalization—Clerk—Assistants. The board may appoint a clerk of the board and any assistants the board might need, all to serve at the pleasure of the members of the board, and the clerk or his assistant, shall attend all sessions thereof, and shall keep the record. Neither the assessor nor any of his staff may serve as clerk. [1970 ex.s. c 55 § 7.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.032 County board of equalization—Appraisers. The board may hire one or more appraisers certified as such by the Washington state department of personnel, society of real estate appraisers, American institute of real estate appraisers, or international association of assessing officers, and not otherwise employed by the county, and other necessary personnel for the purpose of aiding the board and carrying out its functions and duties. In addition, the boards of the various counties may make reciprocal arrangements for the exchange of the appraisers with other counties. Such appraisers need not be residents of the county. [1970 ex.s. c 55 § 8.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.036 County board of equalization—Annual budget. The county commissioners may provide an adequate annual budget and funds for operation and needs of the board of equalization, including, but not limited

to the costs and expenses of the board, such as the meeting place, the necessary equipment and facilities, materials, the salaries of the clerk of the board and his assistants, the expenses of the members of the board during the sessions, travel, in-service training, and payment of salaries of all such employees hired by the board, to facilitate its work. [1970 ex.s. c 55 § 9.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.038 County board of equalization—Legal advisor. The prosecuting attorney of each county shall serve as legal advisor to the board of equalization. [1970 ex.s. c 55 § 10.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.042 County board of equalization—Training school. The department of revenue shall establish a school for the training of members of the several boards of equalization throughout the state. Sessions of such schools shall, so far as practicable, be held in each district of the county commissioners' association. Every member of the board of equalization of each county may attend such school within one year following appointment or reappointment. [1970 ex.s. c 55 § 11.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.046 County board of equalization—Operating manual. The department of revenue shall provide a manual for the operation procedures of the several boards of equalization so that uniformity of assessment may be obtained throughout the state, and the several boards of equalization shall follow such manual in all of its operations and procedures. [1970 ex.s. c 55 § 12.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.48.050 Abstract of rolls to state auditor—State action if assessor does not transmit, when. The county assessor shall, on or before the fifteenth day of January in each year, make out and transmit to the state auditor, in such form as may be prescribed, a complete abstract of the tax rolls of the county, showing the number of acres of land assessed, the value of such land, including the structures thereon; the value of town and city lots, including structures; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized and the total amount of taxes levied in the county for state, county, city and other taxing district purposes, for that year. Should the assessor of any county fail to transmit to the state board of equalization the abstract provided for in RCW 84.48.010 by the time the state board of equalization convenes, and if, by reason of such failure to transmit such abstract, any county shall fail to collect and pay to the state its due proportion of the state tax for any year, the state board of equalization shall, at its next annual session, ascertain

what amount of state tax said county has failed to collect, and certify the same to the state auditor, who shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said sum shall be due and payable immediately by warrant in favor of the state on the current expense fund of said county. [1961 c 15 § 84.48.050. Prior: 1925 ex.s. c 130 § 69; RRS § 11221; prior: 1890 p 557 § 74. Formerly RCW 84.48.050 and 84.48.070.]

84.48.075 County indicated ratio—Determination by department—Submission of preliminary ratio to assessor—Rules—Use classes—Review of preliminary ratio—Certification—Examination of assessment procedures—Adjustment of ratio. (1) The department of revenue shall annually, prior to the first Monday in August, determine and submit to each assessor a preliminary indicated ratio for each county: *Provided*, That the department shall establish rules and regulations pertinent to the determination of the indicated ratio, the indicated real property ratio and the indicated personal property ratio: *Provided further*, That these rules and regulations may provide that data, as is necessary for said determination, which is available from the county assessor of any county and which has been audited as to its validity by the department, shall be utilized by the department in determining the indicated ratio.

(2) To such extent as is reasonable, the department may define use classes of property for the purposes of determination of the indicated ratio. Such use classes may be defined with respect to property use and may include agricultural, open space, timber and forest lands.

(3) The department shall review each county's preliminary ratio with the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, if requested by the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, respectively, between the first and third Mondays of August. Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of August, the department shall certify to each county assessor the real and personal property ratio for that county.

(4) The department of revenue shall also examine procedures used by the assessor to assess real and personal property in the county, including calculations, use of prescribed value schedules, and efforts to locate all taxable property in the county. If any examination by the department discloses other than market value is being listed on the county assessment rolls of the county by the assessor and, after due notification by the department, is not corrected, the department of revenue shall, in accordance with rules adopted by the department, adjust the ratio of that type of property, which adjustment shall be used for determining the county's indicated ratio. [1982 1st ex.s. c 46 § 7; 1977 ex.s. c 284 § 3.]

Purpose—Intent—1977 ex.s. c 284: "It is the intent of the legislature that the methodology used in the equalization of property values for the purposes of the state levy, public utility assessment, and other purposes, shall be designed to ensure uniformity and equity in taxation throughout the state to the maximum extent possible.

It is the purpose of this 1977 amendatory act to provide certain guidelines for the determination of the ratio of assessed value to the full true and fair value of the general property in each county." [1977 ex.s. c 284 § 1.]

84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Record. Annually during the month of August, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

First. The department shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal, so far as possible, to the true and fair value of such class as of January 1st of the current year for the purpose of ascertaining the just amount of tax due from each county for state purposes. Such classification may be on the basis of types of property, geographical areas, or both.

Second. The department shall keep a full record of its proceedings and the same shall be published annually by the department.

The department shall levy the state taxes authorized by law: *Provided*, That the amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state, which assessed value shall be one hundred percent of the true and fair value of such property in money. The department shall apportion the amount of tax for state purposes levied by the department, among the several counties, in proportion to the valuation of the taxable property of the county for the year as equalized by the department: *Provided*, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

After the completion of the duties hereinabove prescribed, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection. [1982 1st ex.s. c 28 § 1; 1979 ex.s. c 86 § 3; 1973 1st ex.s. c 195 § 99; 1971 ex.s. c 288 § 9; 1961 c 15 § 84.48.080. Prior: 1949 c 66 § 1; 1939 c 206 § 36; 1925 ex.s. c 130 § 70; Rem. Supp. 1949 § 11222; prior: 1917 c 55 § 1; 1915 c 7 § 1; 1907 c 215 § 1; 1899 c 141 § 4; 1897 c 71 § 60; 1893 c 124 § 61; 1890 p 557 § 75. Formerly RCW 84.48.080, 84.48.090 and 84.48.100.]

Severability—1982 1st ex.s. c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 28 § 3.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

Severability—Effective dates and termination dates—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—**Severability**—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.48.110 Transcript of proceedings to county assessors—Delinquent tax for certain preceding years included. Within three days after the record of the proceedings of the state board of equalization is certified by the director of the department, the department shall transmit to each county assessor a copy of the record of the proceedings of the board, specifying the amount to be levied and collected on said assessment books for state purposes for such year, and in addition thereto it shall certify to each county assessor the amount due to each state fund and unpaid from such county for the fifth preceding year, and such delinquent state taxes shall be added to the amount levied for the current year. The department shall close the account of each county for the fifth preceding year and charge the amount of such delinquency to the tax levy of the current year. These delinquent taxes shall not be subject to chapter 84.55 RCW. All taxes collected on and after the first day of July last preceding such certificate, on account of delinquent state taxes for the fifth preceding year shall belong to the county and by the county treasurer be credited to the current expense fund of the county in which collected. [1987 c 168 § 1; 1984 c 132 § 4; 1981 c 260 § 17. Prior: 1979 ex.s. c 86 § 4; 1979 c 151 § 185; 1973 c 95 § 11; 1961 c 15 § 84.48.110; prior: 1925 ex.s. c 130 § 71; RRS § 11223; prior: 1899 c 141 § 5; 1897 c 71 § 61; 1893 c 124 § 62; 1890 p 558 § 76.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

84.48.120 Extension of state taxes. It shall be the duty of the county assessor of each county, when he shall have received from the state department of revenue the assessed valuation of the property of railroad and other companies assessed by the department of revenue and apportioned to the county, and placed the same on the tax rolls, and received the report of the department of revenue of the amount of taxes levied for state purposes, to compute the required percent on the assessed value of property in the county, and such state taxes

shall be extended on the tax rolls in the proper column: *Provided*, That the rates so computed shall not be such as to raise a surplus of more than five percent over the total amount required by the state board of equalization: *Provided further*, That any surplus raised shall be remitted to the state in accordance with RCW 84.56.280. [1987 c 168 § 2; 1979 ex.s. c 86 § 5; 1975 1st ex.s. c 278 § 206; 1961 c 15 § 84.48.120. Prior: 1939 c 206 § 37; 1925 ex.s. c 130 § 72; RRS § 11224; prior: 1890 p 544 § 38.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.48.130 Certification of assessed valuation to taxing districts. It shall be the duty of the county assessor of each county, when he shall have received from the state department of revenue the certificate of the assessed valuation of the property of railroad and/or other companies assessed by the department of revenue and apportioned to the county, and shall have distributed the value so certified to him to the several taxing districts in his county entitled to a proportionate value thereof, and placed the same upon the tax rolls of the county, to certify to the board of county commissioners and to the officers authorized by law to estimate expenditures and/or levy taxes for any taxing district coextensive with the county, the total assessed value of property in the county as shown by the completed tax rolls, and to certify to the officers authorized by law to estimate expenditures and/or levy taxes for each taxing district in the county not coextensive with the county, the total assessed value of the property in such taxing district. [1975 1st ex.s. c 278 § 207; 1961 c 15 § 84.48.130. Prior: 1939 c 206 § 38; 1925 ex.s. c 130 § 73; RRS § 11234.]

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.48.140 Property tax advisor. The county commissioners or governing board of any county may designate one or more persons to act as a property tax advisor to any person liable for payment of property taxes in the county. A person designated as a property tax advisor shall not be an employee of the assessor's office or have been associated in any way with the determination of any valuation of property for taxation purposes that may be the subject of an appeal. A person designated as a property tax advisor may be compensated on a fee basis or as an employee by the county from any funds available to the county for use in property evaluation including funds available from the state for use in the property tax revaluation program.

The property tax advisor shall perform such duties as may be set forth by resolution of the county commissioners or other governing authority.

If any board of county commissioners elect to designate a property tax advisor, they shall publicize the services available. [1971 ex.s. c 288 § 11.]

Savings—**Severability**—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.48.150 Valuation criteria including comparative sales to be made available to taxpayers. The assessor shall, upon the request of any taxpayer who petitions the board of equalization for review of a tax claim or valuation dispute, make available to said taxpayer a compilation of comparable sales utilized by the assessor in establishing such taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor shall furnish the taxpayer with such other factors and the addresses of such other property used in making the determination of value.

The assessor shall within thirty days of such request but at least ten business days prior to such taxpayer's appearance before the board of equalization make available to the taxpayer the valuation criteria and/or comparables which shall not be subsequently changed or modified by the assessor during review or appeal proceedings unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor shall provide such additional evidence to the taxpayer at least ten business days prior to the hearing on appeal or review proceedings. A taxpayer who lists comparable sales on his notice of appeal shall not thereafter use other comparables during the review of appeal proceedings: *Provided*, That the taxpayer may change the comparable sales he is using in proceedings subsequent to the county board of equalization only if he provides a listing of such different comparables to the assessor at least five business days prior to such subsequent proceedings: *Provided further*, That the board of equalization may waive the requirements contained in the preceding proviso or allow the assessor a continuance of reasonable duration to check the comparables furnished by the taxpayer. [1973 1st ex.s. c 30 § 1.]

**Chapter 84.52
LEVY OF TAXES**

Sections

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84.52.010 How levied—Effect of constitutional and statutory limitations. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, as now or hereafter amended, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law: *Provided*, That in the event of a levy made pursuant to RCW 84.34.230, the rates of levy for county and county road district purposes shall be reduced in such uniform percentages as will result in a consolidated levy by such taxing districts which will be no greater on any property than a consolidated levy by such taxing districts would be if the levy had not been made pursuant to RCW 84.34.230; and

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, public hospital districts, metropolitan park districts, and library districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.130, and the certified property tax levy rates of public hospital districts, metropolitan park districts, and library districts, shall be reduced on a pro rata basis or

eliminated. [1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010. Prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1971 ex.s. c 243: See RCW 84.34.920.

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.015 Calculation of tax levy rates for excess inventory districts. The county assessor shall calculate tax levy rates for each excess inventory district as follows:

(1) For 1984 taxes, the assessor shall calculate the levy rate as if the assessed value of property in the district included the excess inventory value of the district;

(2) For 1985, 1986, and 1987 taxes, the assessor shall calculate the levy rate after subtracting the payment to be received by the district under RCW 84.09.080 during that year from the total levy amount. [1983 1st ex.s. c 62 § 5.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

"*Excess inventory district*" defined: RCW 84.36.475.

Rules and regulations, procedures: RCW 84.40.405.

84.52.018 Calculation of tax levy rates when the assessment of highly valued property is in dispute. Whenever any property value or claim for exemption or cancellation of a property assessment is appealed to the state board of tax appeals and the dollar difference between the total value asserted by the taxpayer and the total value asserted by the opposing party exceeds one-fourth of one percent of the total assessed value of property in the county, the assessor shall use only that portion of the total value which is not in controversy for purposes of computing the levy rates and extending the tax on the tax roll in accordance with this chapter, unless the state board of tax appeals has issued its determination at the time of extending the tax.

When the state board of tax appeals makes its final determination, the proper amount of tax shall be extended and collected for each taxing district if this has not already been done. The amount of tax collected and extended shall include interest at the rate of nine percent per year on the amount of the board's final determination minus the amount not in controversy. The interest shall accrue from the date the amount not in controversy

was first due and payable. Any amount extended in excess of that permitted by chapter 84.55 RCW shall be held in abeyance and used to reduce the levy rates of the next succeeding levy. [1987 c 156 § 1.]

84.52.020 City and district budgets to be filed with county commissioners, when. It shall be the duty of the city council or other governing body of cities of the first class, except cities having a population of three hundred thousand or more, the city councils or other governing bodies of cities of the second or third class, the board of directors of school districts of the first class, the superintendent of each educational service district for each constituent second class school district, commissioners of port districts, commissioners of metropolitan park districts, and of all officials or boards of taxing districts within or coextensive with any county required by law to certify to boards of county commissioners, for the purpose of levying district taxes, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the city or district, through their chairman and clerk, or secretary, to make and file such certified budget or estimates with the clerk of the board of county commissioners on or before the Wednesday next following the first Monday in October in each year. [1975-'76 2nd ex.s. c 118 § 33; 1975 c 43 § 33; 1961 c 15 § 84.52.020. Prior: 1939 c 37 § 1; 1925 ex.s. c 130 § 75; RRS § 11236; prior: 1909 c 138 § 1; 1893 c 71 §§ 2, 3.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.65.400.

Effective date—**Severability**—1975 c 43: See notes following RCW 28A.57.140.

84.52.025 Budgets of taxing districts filed with county commissioners to indicate estimate of cash balance. The governing body of all taxing districts within or coextensive with any county, which are required by law to certify to a board of county commissioners, for the purpose of levying district taxes, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the district, shall clearly indicate an estimate of cash balance at the beginning and ending of each budget period in said budget or estimate. [1961 c 52 § 1.]

84.52.030 Time of levy. For the purpose of raising revenue for state, county and other taxing district purposes, the board of county commissioners of each county at its October session, and all other officials or boards authorized by law to levy taxes for taxing district purposes, shall levy taxes on all the taxable property in the county or district, as the case may be, sufficient for such purposes, and within the limitations permitted by law. [1961 c 15 § 84.52.030. Prior: 1927 c 303 § 1; 1925 ex.s. c 130 § 77; RRS § 11238; prior: 1903 c 165 § 1; 1897 c 71 § 63; 1893 c 124 § 64; 1890 p 559 § 78; Code 1881 § 2880.]

84.52.040 Levies to be made on assessed valuation. Whenever any taxing district or the officers thereof

shall, pursuant to any provision of law or of its charter or ordinances, levy any tax, the assessed value of the property of such taxing district shall be taken and considered as the taxable value upon which such levy shall be made. [1961 c 15 § 84.52.040. Prior: 1919 c 142 § 3; RRS § 11228.]

84.52.043 Limitations upon regular property tax levies. (Effective unless proposed constitutional amendments are approved by the voters at the November 1987, general election.) Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows: The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; the levy for any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and the levy by or for any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value: *Provided further*, That counties of the fifth class and under are hereby authorized to levy from one dollar and eighty cents to two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes and from one dollar and fifty-seven and one-half cents to two dollars and twenty-five cents per thousand dollars of assessed value for county road purposes if the total levy for both purposes does not exceed four dollars and five cents per thousand dollars of assessed value: *Provided further*, That counties of the fourth and the ninth class are hereby authorized to levy two dollars and two and one-half cents per thousand dollars of assessed value until such time as the junior taxing agencies are utilizing all the dollar rates available to them: *And provided further*, That the total property tax levy authorized by law without a vote of the people shall not exceed nine dollars and fifteen cents per thousand dollars of assessed value. Levies at the rates provided by existing law by or for any port or public utility district shall not be included in the limitation set forth by this proviso.

Nothing herein shall prevent levies at the rates provided by existing law by or for any port or power district.

It is the intent of the legislature that the provisions of this section shall supersede all conflicting provisions of law including section 24, chapter 299, Laws of 1971 ex. sess. and section 8, chapter 124, Laws of 1972 ex. sess. [1973 1st ex.s. c 195 § 134.]

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.] Sections 4 and 5 consist of the 1973 2nd ex.s. c 4 amendments to RCW 70.12.010 and 73.08.080, and section 6 is the section quoted.

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the

support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: *Provided, further*, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: *Provided, further*, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: *Provided, further*, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: *Provided, further*, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: *Provided, further*, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.043 Limitations upon regular property tax levies. (Effective December 10, 1987, if the proposed constitutional amendments are approved by the voters at the November 1987, general election.) Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows: The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; the levy for any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and the levy by or for any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value: *Provided further*, That counties of the fifth class and under are hereby authorized to levy from one dollar and eighty cents to two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes and from one dollar and fifty-seven and one-half cents to two dollars and twenty-five cents per thousand dollars of assessed value for county road purposes if the total levy for both purposes does not exceed four dollars and five cents per thousand dollars of assessed value: *Provided further*, That counties of the fourth and the ninth class are hereby authorized to levy two dollars and two and one-half cents per thousand dollars of assessed value until such time as the junior taxing agencies are utilizing all the dollar rates available to them: *And provided further*, That the total property

tax levy authorized by law without a vote of the people shall not exceed nine dollars and fifteen cents per thousand dollars of assessed value. Levies at the rates provided by existing law by or for any port or public utility district shall not be included in the limitation set forth by this proviso.

Nothing herein shall prevent levies at the rates provided by existing law by or for any port or power district.

Nothing in this section shall prevent the levy under RCW 84.52.064.

It is the intent of the legislature that the provisions of this section shall supersede all conflicting provisions of law including section 24, chapter 299, Laws of 1971 ex. sess. and section 8, chapter 124, Laws of 1972 ex. sess. [1987 c 413 § 10; 1973 1st ex.s. c 195 § 134.]

Contingent effective date—**Severability**—1987 c 413: See notes following RCW 28A.47.060.

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.] Sections 4 and 5 consist of the 1973 2nd ex.s. c 4 amendments to RCW 70.12.010 and 73.08.080, and section 6 is the section quoted.

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: *Provided, further*, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: *Provided, further*, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: *Provided, further*, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: *Provided, further*, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: *Provided, further*, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.050 Limitation of levies. (Effective unless proposed constitutional amendments are approved by the voters at the November 1987, general election.) Except as hereinafter provided, the aggregate of all tax levies upon real and personal property by the state and all taxing districts, now existing or hereafter created, shall not in any year exceed one percentum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now

provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only as authorized by law and in conformity with the provisions of Article VII, section 2(a), (b), or (c) of the Constitution of the state of Washington.

Nothing herein contained shall prohibit the legislature from allocating or reallocating the authority to levy taxes between the taxing districts of the state and its political subdivisions in a manner which complies with the aggregate tax limitation set forth in this section. [1973 1st ex.s. c 194 § 1; 1973 c 2 § 1 (Initiative Measure No. 44, approved November 7, 1972). Prior: 1972 ex.s. c 124 § 8; 1971 ex.s. c 299 § 24; 1970 ex.s. c 92 § 5; 1970 ex.s. c 8 § 4; prior: 1969 ex.s. c 262 § 65; 1969 ex.s. c 216 § 1; 1967 ex.s. c 133 § 3; 1961 c 143 § 1; 1961 c 15 § 84.52.050; prior: 1957 c 262 § 1; 1953 c 175 § 1; 1951 2nd ex.s. c 23 § 2; 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Initiative Measure No. 129); 1937 c 1 (Initiative Measure No. 114); 1935 c 2 (Initiative Measure No. 94); 1933 c 4 (Initiative Measure No. 64); cf. RRS § 11238, 11238-1a, 11238-1b, 11238-1c, 11238-1d; Rem. Supp. 1941 § 11238; Rem. Supp. 1945 § 11238-1e.]

Effective date—Severability—1972 ex.s. c 124: See notes following RCW 28A.41.130.

Effective date—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Intent—Effective date—Application—1970 ex.s. c 92: See notes following RCW 84.52.010.

Limitation on levies: State Constitution Art. 7 § 2.

State levy for support of common schools: RCW 84.52.065 and 84.52.067.

84.52.050 Limitation of levies. (Effective December 10, 1987, if the proposed constitutional amendments are approved by the voters at the November 1987, general election.) Except as hereinafter provided, the aggregate of all tax levies upon real and personal property by the state and all taxing districts, now existing or hereafter created, shall not in any year exceed one percentum of the true and fair value of such property in money: *Provided, however,* That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district, nor prevent the levy under RCW 84.52.064. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only as authorized by law and in conformity with the provisions of Article VII, section 2(a), (b), or (c) of the Constitution of the state of Washington.

Nothing herein contained shall prohibit the legislature from allocating or reallocating the authority to levy taxes between the taxing districts of the state and its political subdivisions in a manner which complies with the aggregate tax limitation set forth in this section. [1987 c 413 § 11; 1973 1st ex.s. c 194 § 1; 1973 c 2 § 1 (Initiative Measure No. 44, approved November 7, 1972). Prior: 1972 ex.s. c 124 § 8; 1971 ex.s. c 299 § 24; 1970 ex.s. c 92 § 5; 1970 ex.s. c 8 § 4; prior: 1969 ex.s. c 262 § 65; 1969 ex.s. c 216 § 1; 1967 ex.s. c 133 § 3; 1961 c 143 § 1; 1961 c 15 § 84.52.050; prior: 1957 c 262 § 1; 1953 c 175 § 1; 1951 2nd ex.s. c 23 § 2; 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Initiative Measure No. 129); 1937 c 1 (Initiative Measure No. 114); 1935 c 2 (Initiative Measure No. 94); 1933 c 4 (Initiative Measure No. 64); cf. RRS § 11238, 11238-1a, 11238-1b, 11238-1c, 11238-1d; Rem. Supp. 1941 § 11238; Rem. Supp. 1945 § 11238-1e.]

Contingent effective date—Severability—1987 c 413: See notes following RCW 28A.47.060.

Effective date—Severability—1972 ex.s. c 124: See notes following RCW 28A.41.130.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Intent—Effective date—Application—1970 ex.s. c 92: See notes following RCW 84.52.010.

Limitation on levies: State Constitution Art. 7 § 2.

State levy for support of common schools: RCW 84.52.065 and 84.52.067.

84.52.052 Excess levies authorized—When—Procedure. The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. Any county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, and convention district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and RCW 84.52.043, or RCW 84.55.010 through 84.55.050, when authorized so to do by the electors of such county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, and convention district in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 64 and as thereafter amended, at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, or cultural arts, stadium, and convention district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no." [1983 c 315 § 10; 1983 c 303 § 16; 1983 c 130 § 11; 1983 c 2 § 19. Prior: 1982 1st ex.s. c 22 § 17; 1982 c 175 § 7; 1982 c 123 § 19; 1981 c 210 § 20; 1977 ex.s. c 325 § 1; 1977 c 4 § 1; 1973 1st ex.s. c 195 § 102; 1973 1st ex.s. c 195 § 147; 1973 c 3 § 1; 1971 ex.s. c 288 § 26; 1965 ex.s. c 113 § 1; 1963 c 112 § 1; 1961 c 15 § 84.52.052; prior: 1959 c 304 § 8; 1959 c 290 § 1; 1957 c 58 § 15; 1957 c 32 § 1; 1955 c 93 § 1; 1953 c 189 § 1; 1951 2nd ex.s. c 23 § 3; prior: 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Init. Meas. No. 129); 1937 c 1 (Init. Meas. No. 114); 1935 c 2 (Init. Meas. No. 94); 1933 c 4 (Init. Meas. No. 64); Rem. Supp. 1945 § 11238-1e, part.]

Reviser's note: This section was amended by 1983 c 315 § 10, by 1983 c 303 § 16, and by 1983 c 130 § 11, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1983 c 315: See note following RCW 90.03.500.

Severability—1983 c 303: See RCW 36.60.905.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1982 1st ex.s. c 22: See RCW 67.38.905.

Severability—1982 c 175: See note following RCW 36.58.100.

Severability—1981 c 210: See note following RCW 36.68.400.

Severability—1977 ex.s. c 325: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 325 § 5.]

Effective date—1977 ex.s. c 325: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 325 § 6.]

Severability—1977 c 4: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 4 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.52.053 Excess levies by school districts authorized—When—Procedure. The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by school districts, when authorized so to do by the electors

of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 79 and as thereafter amended, at a special or general election to be held in the year in which the levy is made or, in the case of a proposition authorizing two-year levies for maintenance and operation support of a school district or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, or both, at a special or general election to be held in the year in which the first annual levy is made: *Provided*, That once additional tax levies have been authorized for maintenance and operation support of a school district for a two year period, no further additional tax levies for maintenance and operation support of the district for that period may be authorized.

A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no." [1987 1st ex.s. c 2 § 103; 1986 c 133 § 1; 1977 ex.s. c 325 § 3.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Contingent effective date—1986 c 133: "This act shall take effect on December 15, 1986, if the proposed amendment to Article VII, section 2 of the state Constitution to change the time periods for school levies, House Joint Resolution No. 55, is validly submitted and is approved and ratified by the voters at a general election held in November, 1986. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1986 c 133 § 3.] 1986 House Joint Resolution No. 55 was approved at the November 1986 general election. See Article VII, section 2 and Amendment 79 of the state Constitution.

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

School district boundary changes: RCW 84.09.037.

School funds enumerated—Deposits—Uses: RCW 28A.58.441.

84.52.0531 Excess levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds. The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For the purpose of this section, the basic education allocation shall be determined pursuant to RCW 28A.41.130, 28A.41.140, and 28A.41.145, as now or hereafter amended: *Provided*, That when determining the basic education allocation under subsection (4) of this section, nonresident full time equivalent pupils who are participating in a program provided for in chapter 28A.44 RCW or in any other program pursuant to an interdistrict agreement shall be included in the enrollment of the resident district and excluded from the enrollment of the serving district.

(2) For the purposes of subsection (5) of this section, a base year levy percentage shall be established. The

base year levy percentage shall be equal to the greater of: (a) The district's actual levy percentage for calendar year 1985, (b) the average levy percentage for all school district levies in the state in calendar year 1985, or (c) the average levy percentage for all school district levies in the educational service district of the district in calendar year 1985.

(3) For excess levies for collection in calendar year 1988 and thereafter, the maximum dollar amount shall be the total of:

(a) The district's levy base as defined in subsection (4) of this section multiplied by the district's maximum levy percentage as defined in subsections (5) and (6) of this section; plus

(b) In the case of nonhigh districts only, an amount equal to the total estimated amount due by the nonhigh school district to high school districts pursuant to chapter 28A.44 RCW for the school year during which collection of the levy is to commence, less the increase in the nonhigh school district's basic education allocation as computed pursuant to subsection (1) of this section due to the inclusion of pupils participating in a program provided for in chapter 28A.44 RCW in such computation; less

(c) The maximum amount of state matching funds under RCW 28A.41.155 for which the district is eligible in that tax collection year.

(4) For excess levies for collection in calendar year 1988 and thereafter, a district's levy base shall be the sum of the following allocations received by the district for the prior school year, including allocations for compensation increases, multiplied by the percent increase per full time equivalent student in the state basic education appropriation between the prior school year and the current school year:

(a) The district's basic education allocation as determined pursuant to RCW 28A.41.130, 28A.41.140, and 28A.41.145;

(b) State and federal categorical allocations for the following programs:

- (i) Pupil transportation;
- (ii) Handicapped education;
- (iii) Education of highly capable students;
- (iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;
- (v) Food services; and
- (vi) State-wide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(5) For levies to be collected in calendar year 1988, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's base year levy percentage as defined in subsection (2) of this section by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as

defined in subsection (7) of this section which are to be allocated to the district for the 1987-88 school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in calendar year 1988.

(6) For excess levies for collection in calendar year 1989 and thereafter, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's maximum levy percentage for the prior year or thirty percent, whichever is less, by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (7) of this section which are to be allocated to the district for the current school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in that calendar year.

(7) "Levy reduction funds" shall mean increases in state funds allocated to a district for programs included under subsection (4) of this section that are not attributable to enrollment or workload changes, compensation increases, or inflationary adjustments recognized in state allocation formulas. Any other increases in state allocations from the district's allocations for the prior school year that are not specifically excluded in this subsection shall be considered levy reduction funds. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data.

(8) For the purposes of this section, "prior school year" shall mean the most recent school year completed prior to the year in which the levies are to be collected.

(9) For the purposes of this section, "current school year" shall mean the year immediately following the prior school year.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section. [1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1. Prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a state-wide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a state-wide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching

profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Severability—1987 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 2 § 213.]

Effective date—1987 1st ex.s. c 2: "This act shall take effect September 1, 1987." [1987 1st ex.s. c 2 § 214.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1985 c 374: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 374 § 3.]

Effective date—1981 c 264: "Section 10 of this amendatory act shall become effective for maintenance and operation excess tax levies now or hereafter authorized pursuant to RCW 84.52.053, as now or hereafter amended, for collection in 1982 and thereafter." [1981 c 264 § 11.]

Severability—1981 c 264: See note following RCW 28A.44.150.

Effective date—1979 ex.s. c 172: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 1, 1979." [1979 ex.s. c 172 § 3.]

Severability—1979 ex.s. c 172: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 172 § 2.]

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

Payments to high school districts for educating nonhigh district students: Chapter 28A.44 RCW.

Purposes: RCW 28A.44.150.

Rules to effect purposes and implement provisions: RCW 28A.44.230.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.44.190.

84.52.054 Excess levies—Ballot contents—Eventual dollar rate on tax rolls. The additional tax provided for in subparagraph (a) of the seventeenth amendment to the state Constitution as amended by Amendment 59 and as thereafter amended, and specifically authorized by RCW 84.52.052, as now or hereafter amended, and RCW 84.52.053 and 84.52.0531, shall be set forth in terms of dollars on the ballot of the proposition to be submitted to the voters, together with an estimate of the dollar rate of tax levy that will be required to produce the dollar amount; and the county assessor, in spreading this tax upon the rolls, shall determine the eventual dollar rate required to produce the amount of dollars so voted upon, regardless of the estimate of dollar rate of tax levy carried in said proposition. In the case of a school district proposition for a particular period, the dollar amount and the corresponding estimate of the dollar rate of tax levy shall be set forth for each of the years in that period. The dollar amount for each annual levy in the particular period may be equal or in different amounts. [1986 c 133 § 2; 1977 ex.s. c 325 § 2; 1977 c 4 § 2; 1973 1st ex.s. c 195 § 103; 1961 c 15 § 84.52.054. Prior: 1955 c 105 § 1.]

Contingent effective date—1986 c 133: See note following RCW 84.52.053.

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

Severability—1977 c 4: See note following RCW 84.52.052.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.52.056 Excess levies for capital purposes authorized. Any municipal corporation otherwise authorized by law to issue general obligation bonds for capital purposes may, at an election duly held after giving notice thereof as required by law, authorize the issuance of general obligation bonds for capital purposes only, which shall not include the replacement of equipment, and provide for the payment of the principal and interest of such bonds by annual levies in excess of the tax limitations contained in RCW 84.52.050 to 84.52.056, inclusive and RCW 84.52.043. Such an election shall not be held oftener than twice a calendar year, and the proposition to issue any such bonds and to exceed said tax limitation must receive the affirmative vote of a three-fifths majority of those voting on the proposition and the total number of persons voting at such election must constitute not less than forty percent of the voters in said municipal corporation who voted at the last preceding general state election.

Any taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitations provided for in RCW 84.52.050 to 84.52.056, inclusive and RCW 84.52.043. [1973 1st ex.s. c 195 § 104; 1973 1st ex.s. c 195 § 148; 1961 c 15 § 84.52.056. Prior: 1959 c 290 § 2; 1951 2nd ex.s. c 23 § 4; prior: 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Init. Meas. No. 129); 1937 c 1 (Init. Meas. No. 114); 1935 c 2 (Init. Meas. No. 94); 1933 c 4 (Init. Meas. No. 64); Rem. Supp. 1945 § 11238-1e, part.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.52.063 Rural library district levies. A rural library district may impose a regular property tax levy in an amount equal to that which would be produced by a levy of fifty cents per thousand dollars of assessed value multiplied by an assessed valuation equal to one hundred percent of the true and fair value of the taxable property in the rural library district, as determined by the department of revenue's indicated county ratio: *Provided*, That when any county assessor shall find that the aggregate rate of levy on any property will exceed the limitation set forth in RCW 84.52.043 and RCW 84.52.050, as now or hereafter amended, before recomputing and establishing a consolidated levy in the manner set forth in RCW 84.52.010, the assessor shall first reduce the levy of any rural library district, by such amount as may be necessary, but the levy of any rural library district shall not be reduced to less than fifty cents per thousand dollars against the value of the taxable property, as determined by the county, prior to any further adjustments pursuant to RCW 84.52.010. For purposes of this section "regular property tax levy" shall mean a levy subject to the limitations provided for in

Article VII, section 2 of the state Constitution and/or by statute. [1973 1st ex.s. c 195 § 105; 1973 1st ex.s. c 195 § 150; 1970 ex.s. c 92 § 9.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Intent—Effective date—Application—1970 ex.s. c 92: See notes following RCW 84.52.010.

84.52.064 State levy for school construction—Deposit of proceeds. (Effective December 10, 1987, if the proposed constitutional amendments are approved by the voters at the November 1987, general election.) There is hereby levied an additional state property tax for school construction, at a rate of thirty-five cents per thousand dollars of assessed valuation adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue, for collection in each year beginning with calendar year 1988 and ending with calendar year 2002. Ten percent of the proceeds of this levy in calendar years 1988 through 1992 shall be deposited as principal in the permanent common school fund. Forty percent of the proceeds of this levy in calendar years 1993 through 1997 shall be deposited as principal in the permanent common school fund. Ninety percent of the proceeds of this levy in calendar years 1998 through 2002 shall be deposited as principal in the permanent common school fund. Remaining proceeds of this levy shall be deposited in the common school construction fund for financing the construction of facilities for the common schools. [1987 c 413 § 6.]

Application—1987 c 413 §§ 6 and 7: "Sections 6 and 7 of this act apply to taxes levied for collection in 1988, and thereafter." [1987 c 413 § 8.] Sections 6 and 7 of this act consist of the enactment of RCW 84.52.064 and 84.55.071.

Implementation—1987 c 413: "The department of revenue shall take all steps necessary so that the taxes may be levied in 1987 for collection in 1988." [1987 c 413 § 12.]

Contingent effective date—Severability—1987 c 413: See notes following RCW 28A.47.060.

84.52.065 State levy for support of common schools. Subject to the limitations in RCW 84.55.010, in each year the state shall levy for collection in the following year for the support of common schools of the state a tax of three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue. [1979 ex.s. c 218 § 1; 1973 1st ex.s. c 195 § 106; 1971 ex.s. c 299 § 25; 1969 ex.s. c 216 § 2; 1967 ex.s. c 133 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Effective date—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Limitation of levies: RCW 84.52.050.

84.52.067 State levy for support of common schools—Disposition of funds. All property taxes levied by the state for the support of common schools shall be paid into the general fund of the state treasury as provided in RCW 84.56.280. [1967 ex.s. c 133 § 2.]

84.52.069 Six-year regular tax levies for emergency medical care and services. (1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the taxing district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election when the number of electors voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting on the proposition exceeds forty per centum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: *Provided*, That if a county levies less than twenty-five cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and twenty-five cents: *Provided further*, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed twenty-five cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: *Provided further*, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: *And provided further*, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: *And provided further*, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which

the county ballot proposition is placed: *And provided further*, That any taxing district emergency medical service levy that is authorized subsequent to a county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The tax levy authorized in this section is in addition to the tax levy authorized in RCW 84.52.043.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section. [1985 c 348 § 1; 1984 c 131 § 5; 1979 ex.s. c 200 § 1.]

Purpose—1984 c 131 §§ 3-9: See note following RCW 29.30.111.

Severability—1979 ex.s. c 200: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 200 § 3.]

84.52.070 Certification of levies to assessor. It shall be the duty of the board of county commissioners of each county, on or before the second Monday in October in each year, to certify to the county assessor of the county the amount of taxes levied upon the property in the county for county purposes, and the respective amounts of taxes levied by the board for each taxing district, within or coextensive with the county, for district purposes, and it shall be the duty of city councils of cities of the first class having a population of three hundred thousand or more, and of city councils of cities of the fourth class, or towns, and of all officials or boards of taxing districts within or coextensive with the county, authorized by law to levy taxes directly and not through the board of county commissioners, on or before the second Monday in October in each year, to certify to the county assessor of the county the amount of taxes levied upon the property within the city or district for city or district purposes. [1961 c 15 § 84.52.070. Prior: 1925 ex.s. c 130 § 78; RRS § 11239; prior: 1890 p 558 §§ 77, 78; Code 1881 § 2881.]

84.52.080 Extension of taxes on rolls—Form of certificate—Delivery to treasurer. (1) The county assessor shall extend the taxes upon the tax rolls in the form herein prescribed. The rate percent necessary to raise the amounts of taxes levied for state and county purposes, and for purposes of taxing districts coextensive with the county, shall be computed upon the assessed value of the property of the county; the rate percent necessary to raise the amount of taxes levied for any taxing district within the county shall be computed upon the assessed value of the property of the district; all taxes assessed against any property shall be added together and extended on the rolls in a column headed consolidated or total tax. In extending any tax, whenever it amounts to a fractional part of a cent greater than five mills it shall be made one cent, and whenever it amounts to five mills or less than five mills it shall be dropped. The amount of all taxes shall be entered in the proper columns, as shown by entering the rate percent necessary to raise the consolidated or total tax and the total tax assessed against the property.

(2) For the purpose of computing the rate necessary to raise the amount of any excess levy in a taxing district which has classified or designated forest land under chapter 84.33 RCW, other than the state, the county assessor shall add the district's timber assessed value, as defined in RCW 84.33.035, to the assessed value of the property: *Provided*, That for school districts maintenance and operations levies only one-half of the district's timber assessed value or eighty percent of the timber roll of such district in calendar year 1983 as determined under chapter 84.33 RCW, whichever is greater, shall be added.

(3) Upon the completion of such tax extension, it shall be the duty of the county assessor to make in each assessment book, tax roll or list a certificate in the following form:

I, _____, assessor of _____ county, state of Washington, do hereby certify that the foregoing is a correct list of taxes levied on the real and personal property in the county of _____ for the year one thousand nine hundred and _____.

Witness my hand this _____ day of _____, 19__.

_____, County Assessor

(4) The county assessor shall deliver said tax rolls to the county treasurer on or before the fifteenth day of December, taking his receipt therefor, and at the same time the county assessor shall provide the county auditor with an abstract of the tax rolls showing the total amount of taxes collectible in each of the taxing districts. [1985 c 184 § 2; 1984 c 204 § 14; 1965 ex.s. c 7 § 1; 1961 c 15 § 84.52.080. Prior: 1925 ex.s. c 130 § 79; RRS § 11240; prior: 1909 c 230 § 4; 1905 c 128 § 1; 1897 c 71 §§ 64, 65; 1893 c 124 §§ 65, 66; 1890 p 566 §§ 79, 81; Code 1881 §§ 2883, 2884.]

Effective date—1985 c 184 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, and shall be effective for taxes levied for collection in 1986 and thereafter." [1985 c 184 § 4.] "Section 2 of this act" is the 1985 c 184 amendment to RCW 84.52.080 and took effect April 25, 1985.

Savings—**Effective date**—1984 c 204: See notes following RCW 84.33.035.

84.52.090 Record of errors—November meeting of board of equalization. The county assessor shall make a record of all errors in descriptions, double assessments, or manifest errors in assessment appearing on the assessment list at the time of the extension of the rolls, and after duly verifying the same, file said record with the county board of equalization on the third Monday in November next succeeding the annual meeting of the county board of equalization. The county board of equalization shall reconvene on such day for the sole purpose of considering such errors in description, double assessments, or manifest errors appearing on the assessment list at the time of the extension of the rolls and shall proceed to correct the same, but said board shall have no authority to change the assessed valuation of the property of any person or to reduce the aggregate

amount of the assessed valuation of the taxable property of the county, except only insofar as the same may be affected by the corrections ordered based on the record submitted by the county assessor. [1961 c 15 § 84.52-.090. Prior: 1925 ex.s. c 130 § 80; RRS § 11241.]

84.52.100 Library district, public hospital district, metropolitan park district, or fire protection district—Increase of cumulative limitation on regular property tax rates authorized—Ballot proposition. (1) The governing body of any library district, public hospital district, metropolitan park district, or fire protection district may provide for the submission of a ballot proposition to the voters of the taxing district authorizing the taxing district to maintain its otherwise authorized tax levy rate, and authorizing an increase in the cumulative regular property tax limitation of nine dollars and fifteen cents per thousand dollars of assessed valuation within the taxing district, as provided in this section. A fire protection district may use this authority to increase its regular property tax levy up to fifty cents per thousand dollars of assessed valuation.

(2) A resolution by a governing body, requesting that a special election be called to submit such a ballot proposition to the voters, must be transmitted to the county legislative authority of the county, or county legislative authorities of the counties, within which the taxing district is located, at least forty-five days before the special election date at which the ballot proposition is submitted. The ballot proposition shall be worded substantially as follows:

"Shall the cumulative limitation on most regular property tax rates be increased by an amount not exceeding thirty-five cents per thousand dollars of assessed valuation for a five consecutive year period allowing (insert the name of the taxing district) to maintain its otherwise authorized property tax rate?"

The ballot proposition for a fire protection district shall be worded substantially as follows:

"Shall the cumulative limitation on most regular property tax rates be increased by an amount not exceeding thirty-five cents per thousand dollars of assessed valuation for a five consecutive year period allowing (insert the name of the taxing district) to permit the fire protection district to impose its property tax at a value up to fifty cents per thousand dollars of assessed valuation?"

Approval of this ballot proposition by a simple majority vote shall authorize the following for the succeeding five consecutive year period: (a) Property tax rates of junior taxing districts are calculated first as if this proposition had not been approved; (b) subject to the one hundred six percent limitation, the regular property tax rate of the taxing district receiving such authorization is increased to a level not exceeding the lesser of its maximum authorized regular property tax rate or whatever tax rate it otherwise would have been able to impose plus an additional thirty-five cents per thousand dollars of assessed valuation; and (c) the cumulative property tax rate limitation is increased within the boundaries of the taxing district receiving this authorization to an

amount equal to nine dollars and fifteen cents per thousand dollars of assessed valuation plus the increased amount of the regular levy rate of this taxing district, but not to exceed nine dollars and fifty cents per thousand dollars of assessed valuation.

(3) If two or more taxing districts that occupy a portion of the same territory receive such approval, the additional authorized taxing capacity above nine dollars and fifteen cents per thousand dollars of assessed valuation shall be distributed among these taxing districts by adjusting their levy rate requests in the same manner and under the same conditions as if they were the only taxing districts in the area subject to adjustment of their property tax rates and the levy rate adjustments were being made with the cumulative limitation of nine dollars and fifteen cents per thousand dollars of assessed valuation.

(4) Levies authorized under RCW 84.52.069 are not subject to the rate adjustments and the nine dollar and fifty cent per thousand dollar of assessed valuation cumulative limitation on regular property tax rates established by this section. [1987 c 138 § 7.]

84.52.700 County airport district levy authorized. See RCW 14.08.290.

84.52.703 Mosquito control district levies authorized. See RCW 17.28.100, 17.28.252, and 17.28.260.

84.52.706 Rural county library district levy authorized. See RCW 27.12.050 and 27.12.222.

84.52.709 Intercounty rural library district levy authorized. See RCW 27.12.150 and 27.12.222.

84.52.712 Reduction of city levy if part of library district. See RCW 27.12.390.

84.52.713 Island library district levy authorized. See RCW 27.12.420 and 27.12.222.

84.52.718 Levy by receiver of disincorporated city authorized. See RCW 35.07.180.

84.52.719 Second class city levies. See RCW 35.23-.470, 35.23.500, 35.23.510, and 35.23.540.

84.52.721 Unclassified city sewer fund levy authorized. See RCW 35.30.020.

84.52.724 City accident fund levy authorized. See RCW 35.31.060.

84.52.727 City emergency fund levy authorized. See RCW 35.32A.060.

84.52.730 City lowlands and waterway projects levy authorized. See RCW 35.56.190.

84.52.733 Metropolitan municipal corporation levy authorized. See RCW 35.58.090.

84.52.736 Metropolitan park district levy authorized. See RCW 35.61.210.

84.52.739 Code city accident fund levy authorized. See RCW 35A.31.070.

84.52.742 County lands assessment fund levy authorized. See RCW 36.33.120 and 36.33.140.

84.52.745 General county levy authorized. See RCW 36.40.090.

84.52.748 Ferry district levy authorized. See RCW 36.54.080.

84.52.749 County rail district tax levies authorized. See RCW 36.60.040.

84.52.750 Solid waste disposal district—Excess levies authorized. See RCW 36.58.150.

84.52.751 County hospital maintenance levy authorized. See RCW 36.62.090.

84.52.754 Park and recreation service area levies authorized. See RCW 36.68.520 and 36.68.525.

84.52.757 Park and recreation district levies authorized. See RCW 36.69.140 and 36.69.145.

84.52.760 County road fund levy authorized. See RCW 36.82.040.

84.52.761 Road and bridge service district levies authorized. See RCW 36.83.030 and 36.83.040.

84.52.763 City firemen's pension fund levy authorized. See RCW 41.16.060.

84.52.766 Township road district levy authorized. See RCW 45.72.050 and 45.72.060.

84.52.769 Reduction of city levy if part of fire protection district. See RCW 52.04.081.

84.52.772 Fire protection district levies authorized. See RCW 52.16.130, 52.16.140, and 52.16.160.

84.52.775 Port district levies authorized. See RCW 53.36.020, 53.36.070, 53.36.100, and 53.47.040.

84.52.778 Public utility district levy authorized. See RCW 54.16.080.

84.52.781 Sewer district levies authorized. See RCW 56.04.050 and 56.16.010.

84.52.784 Water district levies authorized. See RCW 57.04.050, 57.16.020, 57.16.040, and 57.20.100.

84.52.786 Cultural arts, stadium and convention district tax levies authorized. See RCW 67.38.110 and 67.38.130.

84.52.787 Cemetery district levy authorized. See RCW 68.52.290 and 68.52.310.

84.52.790 Public hospital district levy authorized. See RCW 70.44.060.

84.52.793 Air pollution control agency levy authorized. See RCW 70.94.091.

84.52.796 Mental retardation and developmental disability services levy authorized. See RCW 71.20.110.

84.52.799 Veteran's relief fund levy authorized. See RCW 73.08.080.

84.52.802 Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association—Property tax levy authorized. See RCW 84.34.230.

84.52.805 Diking and drainage system levies authorized. See RCW 85.24.210 and 85.24.250.

84.52.808 River improvement fund levy authorized. See RCW 86.12.010.

84.52.811 Intercounty river control agreement levy authorized. See RCW 86.13.010 and 86.13.030.

84.52.814 Flood control zone district levy authorized. See RCW 86.15.160.

84.52.817 Irrigation and rehabilitation district special assessment authorized. See RCW 87.84.070.

84.52.820 Reclamation district levy authorized. See RCW 89.30.391 through 89.30.397.

Chapter 84.55

LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

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- 84.55.040 Increase in statutory dollar rate limitation.
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- 84.55.090 Levies for taxes due in 1985 through 1988—Expiration of section.
- 84.55.092 Levies for taxes due in 1987 through 1991—Expiration of section.
- 84.55.100 Determination of limitations.
- 84.55.110 Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district—Calculation of taxes due.

84.55.005 "Regular property taxes" defined. As used in this chapter, the term "regular property taxes" has the meaning given it in RCW 84.04.140, and also includes amounts received in lieu of regular property taxes under RCW 84.09.080. [1983 1st ex.s. c 62 § 11.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

84.55.010 Limitations prescribed. Except as provided in this chapter, the levy for a taxing district in any year shall be set so that the regular property taxes payable in the following year shall not exceed one hundred six percent of the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax levy rate of that district for the preceding year. [1979 ex.s. c 218 § 2; 1973 1st ex.s. c 67 § 1; 1971 ex.s. c 288 § 20.]

Reviser's note: Throughout chapter 84.55 RCW the phrase "this 1971 amendatory act" has been changed to "this chapter". "This 1971 amendatory act" [1971 ex.s. c 288] consists of this chapter and RCW 36.21.015, 36.29.015, 84.04.140, 84.10.010, 84.36.370, 84.36.380, 84.40.030, 84.40.0301, 84.40.045, 84.41.030, 84.41.040, 84.48.080, 84.48.085, 84.48.140, 84.52.052, 84.56.020, and 84.69.020, and the repeal of RCW 84.36.128, 84.36.129 and 84.54.010.

Effective date—Applicability—1979 ex.s. c 218: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That the amendment to RCW 84.55.010 by section 2 of this act shall be effective for 1979 levies for taxes collected in 1980, and for subsequent years." [1979 ex.s. c 218 § 8.] The effective date of 1979 ex.s. c 218 is June 4, 1979.

84.55.015 Restoration of regular levy. If a taxing district has not levied in the three most recent years and elects to restore a regular property tax levy subject to applicable statutory limitations then such first restored levy shall be set so that the regular property tax payable shall not exceed the amount which could have been lawfully levied in 1973, plus an additional dollar amount calculated by multiplying the increase in assessed value in the district since 1973 resulting from new construction and improvements to property by the property tax rate which is proposed to be restored, or the maximum amount which could be lawfully levied in the year such a restored levy is proposed. [1979 ex.s. c 218 § 4.]

84.55.020 Limitation upon first levy for district created from consolidation. Notwithstanding the limitation set forth in RCW 84.55.010, the first levy for a taxing

district created from consolidation of similar taxing districts shall be set so that the regular property taxes payable in the following year shall not exceed one hundred six percent of the sum of the amount of regular property taxes lawfully levied for each component taxing district in the highest of the three most recent years in which such taxes were levied for such district plus the additional dollar amount calculated by multiplying the increase in assessed value in each component district resulting from new construction and improvements to property by the regular property tax rate of each component district for the preceding year. [1971 ex.s. c 288 § 21.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.55.030 Limitation upon first levy following annexation. For the first levy for a taxing district following annexation of additional property, the limitation set forth in RCW 84.55.010 shall be increased by an amount equal to (1) the aggregate assessed valuation of the newly annexed property as shown by the current completed and balanced tax rolls of the county or counties within which such property lies, multiplied by (2) the dollar rate that would have been used by the annexing unit in the absence of such annexation, plus (3) the additional dollar amount calculated by multiplying the increase in assessed value in the annexing district resulting from new constructions and improvements to property by the regular property tax levy rate of that annexing taxing district for the preceding year. [1973 1st ex.s. c 195 § 107; 1971 ex.s. c 288 § 22.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.55.035 Inapplicability of limitation to newly-formed taxing district created other than by consolidation or annexation. RCW 84.55.010 shall not apply to the first levy by or for a newly-formed taxing district created other than by consolidation or annexation.

This section shall be retroactive in effect and shall be deemed to validate any levy within its scope, even though the levy has been made prior to June 4, 1979. [1979 ex.s. c 218 § 5.]

84.55.040 Increase in statutory dollar rate limitation. If by reason of the operation of RCW 84.52.043 and RCW 84.52.050, as now or hereafter amended the statutory dollar rate limitation applicable to the levy by a taxing district has been increased over the statutory millage limitation applicable to such taxing district's levy in the preceding year, the limitation on the dollar rate amount of a levy provided for in this chapter shall be increased by multiplying the otherwise dollar limitation by a fraction, the numerator of which is the increased dollar limitation and the denominator of which is the dollar limitation for the prior year. [1973 1st ex.s. c 195 § 108; 1973 1st ex.s. c 195 § 151; 1971 ex.s. c 288 § 23.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.55.045 Applicability of chapter to levy by port district for industrial development district purposes. For purposes of applying the provisions of this chapter:

(1) A levy by or for a port district pursuant to RCW 53.36.100 shall be treated in the same manner as a separate regular property tax levy made by or for a separate taxing district; and

(2) The first levy by or for a port district pursuant to RCW 53.36.100 after April 1, 1982, shall not be subject to RCW 84.55.010. [1982 1st ex.s. c 3 § 2.]

Effective date—1982 1st ex.s. c 3: See note following RCW 53.36.100.

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure. (1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made. The ballot of the proposition shall state the dollar rate proposed.

(2) After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, except as provided in subsection (4) of this section.

(3) A proposition placed before the voters under this section may:

(a) Limit the period for which the increased levy is to be made;

(b) Limit the purpose for which the increased levy is to be made;

(c) Set the levy at a rate less than the maximum rate allowed for the district; or

(d) Include any combination of the conditions in this subsection.

(4) After the expiration of a limited period or the satisfaction of a limited purpose, whichever comes first, subsequent levies shall be computed as if:

(a) The limited proposition under subsection (3) of this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the limited proposition. [1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.55.060 Rate rules—Educational program—Other necessary action. The department of revenue shall adopt rules relating to the calculation of tax rates and the limitation in RCW 84.55.010, conduct an educational program on this subject, and take any other action necessary to insure compliance with the statutes and rules on this subject. [1979 ex.s. c 218 § 6.]

84.55.070 Inapplicability of chapter to levies for certain purposes. The provisions of this chapter shall not apply to a levy, including the state levy, or that portion of a levy, made by or for a taxing district for the purpose of funding a property tax refund paid or to be paid pursuant to the provisions of chapters 84.68 RCW or attributable to a property tax refund paid or to be paid pursuant to the provisions of chapter 84.69 RCW, attributable to amounts of state taxes withheld under RCW 84.56.290 or the provisions of chapter 84.69 RCW, or otherwise attributable to state taxes lawfully owing by reason of adjustments made under RCW 84.48.080. [1982 1st ex.s. c 28 § 2; 1981 c 228 § 3.]

Severability—1982 1st ex.s. c 28: See note following RCW 84.48.080.

84.55.071 Inapplicability of chapter to levy for school construction under RCW 84.52.064. (Effective December 10, 1987, if the proposed constitutional amendments are approved by the voters at the November 1987, general election.) This chapter does not apply to the levy under RCW 84.52.064. [1987 c 413 § 7.]

Application—1987 c 413 §§ 6 and 7: See note following RCW 84.52.064.

Contingent effective date—Severability—1987 c 413: See notes following RCW 28A.47.060.

84.55.080 Adjustment to tax limitation. Pursuant to chapter 39.88 RCW, any increase in the assessed value of real property within an apportionment district resulting from new construction, improvements to property, or any increase in the assessed value of state-assessed property shall not be included in the increase in assessed value resulting from new construction, improvements, or any increase in the assessed value of state-assessed property for purposes of calculating any limitations upon regular property taxes under this chapter until the termination of apportionment as set forth in RCW 39.88.070(4), as now or hereafter amended, except to the extent a taxing district actually will receive the taxes levied upon this value. Tax allocation revenues, as defined in RCW 39.88.020, as now or hereafter amended, shall not be deemed to be "regular property taxes" for purposes of this chapter. [1982 1st ex.s. c 42 § 12.]

Captions not part of law—Severability—1982 1st ex.s. c 42: See RCW 39.88.910 and 39.88.915.

84.55.090 Levies for taxes due in 1985 through 1988—Expiration of section. The regular property tax levies for each taxing district for taxes due in 1985 through 1988 may be set at the amount which would

otherwise be allowed under this chapter if the regular property tax levy for the district for taxes due in 1984 had been set at the full amount allowed under this chapter.

This section shall expire December 31, 1988. [1983 1st ex.s. c 62 § 12.]

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.473.

84.55.092 Levies for taxes due in 1987 through 1991—Expiration of section. The regular property tax levies for each taxing district other than the state for taxes due in 1987 through 1991 may be set at the amount which would otherwise be allowed under this chapter if the regular property tax levy for the district for taxes due in 1986 and 1987 had been set at the full amount allowed under this chapter.

This section shall expire December 31, 1991. [1986 c 107 § 3.]

Severability—Construction—1986 c 107: See notes following RCW 39.67.010.

84.55.100 Determination of limitations. The property tax limitation contained in this chapter shall be determined by the county assessors of the respective counties in accordance with the provisions of this chapter: *Provided*, That the limitation for any state levy shall be determined by the department of revenue and the limitation for any intercounty rural library district shall be determined by the library district in consultation with the respective county assessors. [1983 c 223 § 1.]

84.55.110 Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district—Calculation of taxes due. Whenever a withdrawal occurs under RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, restrictions under chapter 84.55 RCW on the taxes due for the library district, metropolitan park district, fire protection district, or public hospital district, and restrictions under chapter 84.55 RCW on the taxes due for the city or town if an entire city or town area is withdrawn from a library district or fire protection district, shall be calculated as if the withdrawn area had not been part of the library district, metropolitan park district, fire protection district, or public hospital district, and as if the library district or fire protection district had not been part of the city or town. [1987 c 138 § 6.]

Chapter 84.56

COLLECTION OF TAXES

Sections

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84.56.010 Warrant authorizing collection of taxes. On or before the first Monday in January next succeeding the date of levy of taxes the county auditor shall issue to the county treasurer his warrant authorizing the collection of taxes listed on the tax rolls of his county as certified by the county assessor for such assessment year, and said rolls shall be preserved as a public record in the office of the county treasurer. The amount of said taxes levied and extended upon said rolls shall be charged to the treasurer in an account to be designated as treasurer's "Tax roll account" for ----- and said rolls with the warrants for collection shall be full and sufficient authority for the county treasurer to receive and collect all taxes therein levied: *Provided*, That the county treasurer shall in no case collect such taxes or issue receipts for the same or enter payment or satisfaction of such taxes upon said assessment rolls before the fifteenth day of February following. [1975-'76 2nd ex.s. c 10 § 1; 1965 ex.s. c 7 § 2; 1961 c 15 § 84.56.010. Prior: 1935 c

30 § 1; 1925 ex.s. c 130 § 82; RRS § 11243; prior: 1890 p 561 § 83.]

Reviser's note: This section appears as it did before its amendment by 1975-76 2nd ex.s. c 10 because of 1975-76 2nd ex.s. c 10 § 3 which states "This 1976 amendatory act shall be effective with respect to 1976 collections of all real and personal property taxes, and shall expire on December 31, 1976."

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties. The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer as aforesaid on or before the thirtieth day of April and shall be delinquent after that date: *Provided*, That each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of _____ County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual: *Provided further*, That when the total amount of tax on personal property or on any lot, block or tract of real property payable by one person is ten dollars or more, and if one-half of such tax be paid on or before the said thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date: *Provided further*, That when the total amount of tax on any lot, block or tract of real property payable by one person is ten dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of such tax, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(1) A penalty of three percent shall be assessed on the amount of tax delinquent on May 31st of the year in which the tax is due.

(2) An additional penalty of eight percent shall be assessed on the total amount of tax delinquent on November 30th of the year in which the tax is due.

(3) Penalties under this section shall not be assessed on taxes that were first delinquent prior to 1982.

For purposes of this chapter, "interest" means both interest and penalties.

All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost

of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations. [1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020. Prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

Effective date—1987 c 211: "This act shall take effect January 1, 1988." [1987 c 211 § 2.]

Applicability—1984 c 131 § 1: "Section 1 of this act applies to taxes payable in 1985 and thereafter." [1984 c 131 § 12.] "Section 1 of this act" consists of the 1984 c 131 amendment to RCW 84.56.020.

Severability—1974 ex.s. c 196: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 196 § 9.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Advance deposit of taxes on certain platted property: RCW 58.08.040.
Payment of taxes upon loss of exempt status: RCW 84.40.380.

84.56.025 Waiver of interest and penalties—Circumstances. The interest and penalties for delinquencies on property taxes, which taxes are levied on real estate in the year of a conveyance of the real estate and which are collected in the following year, shall be waived by the county treasurer under the following circumstances:

(1) Records conveying the real estate were filed with the county auditor on or before November 30 of the year the taxes are levied;

(2) A grantee's name and address are included in the records; and

(3) The notice for these taxes due, as provided in RCW 84.56.050, was not sent to a grantee due to error by the county. Where such waiver of interest and penalties has occurred, the full amount of interest and penalties shall be reinstated if the grantee fails to pay the delinquent taxes within thirty days of receiving notice that the taxes are due. Each county treasurer shall, subject to guidelines prepared by the department of revenue, establish administrative procedures to determine if grantees are eligible for this waiver. [1984 c 185 § 1.]

84.56.035 Special assessments, excise taxes, or rates and charges—Collection by county treasurer authorized. A local government authorized both to impose and to collect any special assessments, excise taxes, or rates or charges may contract with the county treasurer or treasurers within which the local government is located to collect the special assessments, excise taxes, rates, or charges. If such a contract is entered into, notice of the special assessments, excise taxes, or rates or charges due may be included on the notice of property taxes due, may be included on a separate notice that is mailed with

the notice of property taxes due, or may be sent separately from the notice of property taxes due. County treasurers may impose an annual fee for collecting special assessments, excise taxes, or rates or charges not to exceed one percent of the dollar value of special assessments, excise taxes, or rates or charges collected. [1987 c 355 § 1.]

84.56.050 Treasurer's duties on receiving rolls—
Notice of taxes due. On receiving the tax rolls the treasurer shall post all real and personal property taxes from said rolls to the treasurer's tax segregation register, and shall carry forward to the current tax rolls, or if he so elects to a separate card or other record of delinquencies, a memorandum of all delinquent taxes on each and every description of property, and enter the same opposite or under the property upon which the said taxes are delinquent, in a space provided for that purpose, showing the amounts for each year. The treasurer shall notify each taxpayer in his county, at the expense of the county, of the amount of his real and personal property, and the total amount of tax due on the same; and the treasurer shall either have printed on said notice the name of each tax and the levy made on the same, or shall during the month of February publish once in a newspaper having general circulation in the county a listing of the levies made in the respective taxing districts and shall upon request furnish such a listing to any one requesting the same; and the county treasurer shall be the sole collector of all delinquent taxes and all other taxes due and collectible on the tax rolls of the county: *Provided*, That the term "taxpayer" as used in this section shall mean any person charged, or whose property is charged, with property tax; and the person to be notified is that person whose name appears on the tax roll herein mentioned: *Provided, further*, That if no name so appears the person to be notified is that person shown by the treasurer's tax rolls or duplicate tax receipts of any preceding year as the payer of the tax last paid on the property in question. [1963 c 94 § 1; 1961 c 15 § 84.56-.050. Prior: 1941 c 32 § 1; 1939 c 206 § 41; 1937 c 121 § 2; 1925 ex.s. c 130 § 84; Rem. Supp. 1941 § 11245; prior: 1897 c 71 § 69; 1893 c 124 § 70; 1890 p 561 § 85; Code 1881 § § 2894, 2895.]

84.56.060 Tax receipts—Current tax only may be paid—Collection register. The county treasurer upon receiving any tax, shall give to the person paying the same a receipt therefor, specifying therein the land, city or town lot, or other real and personal property on which the tax so paid was levied according to its description on the treasurer's tax roll and the year for which the tax was levied. The owner or owners of property against which there are delinquent taxes, shall have the right to pay the current tax without paying any delinquent taxes there may be against said property: *Provided, however*, That in issuing a receipt for such current tax the county treasurer shall endorse upon the face of such receipt a memorandum of all delinquent taxes against the property therein described, showing the year for which said tax is delinquent and the amount of delinquent tax for

each and every year. Such receipts shall be numbered consecutively for such year and such numbers and amount of taxes paid shall be immediately entered upon the treasurer's tax roll opposite or under each and every piece of property therein for which such receipt was given; it shall contain the name of the party paying, with the amount and date of payment and the description of the property upon which the tax is paid. Such receipt shall be made out with a stub, which shall be a summary of the receipt. He shall post such collections into his cash or collection register, provided for that purpose, to thus keep an accurate account not only of the gross amount of collections, but also the amount collected upon the consolidated fund and upon each and every separate fund. The treasurer shall also keep a separate register for the purpose of entering therein all collections made on account of delinquent taxes: *Provided further*, That the treasurer shall be deemed to have complied with the receipt requirement of this section if he shall establish a procedure whereby notice to any person charged with tax is given by mail and which provides each taxpayer with a copy or stub of the tax statement containing all of the information as required on a receipt for payment of the taxes due. [1971 ex.s. c 35 § 1; 1961 c 15 § 84.56.060. Prior: 1925 ex.s. c 130 § 85; RRS § 11246; prior: 1897 c 71 § 70; 1893 c 124 § 71; 1890 p 561 § 86; Code 1881 § 2899.]

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of. On the fifteenth day of February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same when due, he shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner, and he shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or his deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten

days after the taking of such property, such treasurer shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall pay such overplus to the owner of the property so sold or to his legal representative: *Provided*, That whenever it shall become necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession when the said treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that he has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of said notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: *And provided further*, That if the county treasurer has reasonable grounds to believe that any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distraint sufficient goods and chattels to pay the same. [1975-'76 2nd ex.s. c 10 § 2; 1961 c 15 § 84.56.070. Prior: 1949 c 21 § 2; 1935 c 30 § 4; 1933 c 33 § 1; 1925 ex.s. c 130 § 86; Rem. Supp. 1949 § 11247; prior: 1915 c 137 § 1; 1911 c 24 § 2; 1899 c 141 § 7; 1897 c 71 § 71; 1895 c 176 § 15; 1893 c 124 § 72; 1890 p 561 § 87; Code 1881 § 2903. Formerly RCW 84.56.070, 84.56.080 and 84.56.100.]

Reviser's note: This section appears as it did before its amendment by 1975-'76 2nd ex.s. c 10 because of 1975-'76 2nd ex.s. c 10 § 3 which states "This 1976 amendatory act shall be effective with respect to 1976 collections of all real and personal property taxes, and shall expire on December 31, 1976."

84.56.090 Distraint and sale of property about to be removed, dissipated, sold, or disposed of—Computation of taxes, entry on rolls, tax liens. Whenever in the judgment of the assessor or the county treasurer personal property is being removed or is about to be removed without the limits of the state, or is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the treasurer shall immediately prepare papers in distraint, which shall contain a description of the personal property being or about to be removed, dissipated, sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the amount of the tax, the amount of accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner, and he shall

without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall advertise and sell said property as provided in RCW 84.56.070.

If said personal property is being removed or is about to be removed from the limits of the state, is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize collection of taxes, at any time subsequent to the first day of January in any year, and prior to the levy of taxes thereon, the taxes upon such property so distrained shall be computed upon the rate of levy for state, county and local purposes for the preceding year; and all taxes collected in advance of levy under this section and RCW 84.56.120, together with the name of the owner and a brief description of the property assessed shall be entered forthwith by the county treasurer upon the personal property tax rolls of such preceding year, and all collections thereon shall be considered and treated in all respects, and without recourse by either the owner or any taxing unit, as collections for such preceding year. Property on which taxes are thus collected shall thereupon become discharged from the lien of any taxes that may thereafter be levied in the year in which payment or collection is made.

Whenever property has been removed from the county wherein it has been assessed, on which the taxes have not been paid, then the county treasurer, or his deputy, shall have the same power to distraint and sell said property for the satisfaction of said taxes as he would have if said property were situated in the county in which the property was taxed, and in addition thereto said treasurer, or his deputy, in the distraint and sale of property for the payment of taxes, shall have the same powers as are now by law given to the sheriff in making levy and sale of property on execution. [1985 c 83 § 1; 1961 c 15 § 84.56.090. Prior: 1949 c 21 § 3; 1939 c 206 § 43; 1937 c 20 § 1; 1925 ex.s. c 130 § 89; Rem. Supp. 1949 § 11250; prior: 1907 c 29 § 1. Formerly RCW 84.56.090, 84.56.110, 84.56.130 and 84.56.140.]

84.56.120 Removal of property from state after assessment without paying tax. After personal property has been assessed, it shall be unlawful for any person to remove the same from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, and no property shall be sold at such sale until the tax has been paid, the tax to be computed upon the consolidated tax levy for the previous year. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1961 c 15 § 84.56.120. Prior: 1925 ex.s. c 130 § 88; RRS § 11249; prior: 1907 c 29 § 2.]

84.56.150 Removal of personalty—Certification of tax by treasurer. If any person, firm or corporation shall remove from one county to another in this state personal

property which has been assessed in the former county for a tax which is unpaid at the time of such removal, the treasurer of the county from which the property is removed shall certify to the treasurer of the county to which the property has been removed a statement of the tax together with all delinquencies and penalties. [1961 c 15 § 84.56.150. Prior: 1925 ex.s. c 130 § 90; RRS § 11251; prior: 1899 c 32 § 1.]

84.56.160 Certification between counties. The treasurer of any county of this state shall have the power to certify a statement of taxes and delinquencies of any person, firm, company or corporation, or of any tax on personal property together with all penalties and delinquencies, which statement shall be under seal and contain a transcript of the warrant of collection and so much of the tax roll as shall affect the person, firm, company or corporation or personal property to the treasurer of any county of this state, wherein any such person, firm, company or corporation has any real or personal property. [1961 c 15 § 84.56.160. Prior: 1925 ex.s. c 130 § 91; RRS § 11252; prior: 1899 c 32 § 2.]

84.56.170 Collection of certified taxes—Remittance. The treasurer of any county of this state receiving the certified statement provided for in RCW 84.56.150 and 84.56.160, shall have the same power to collect the taxes, penalties and delinquencies so certified as he has to collect the personal taxes levied on personal property in his own county, and as soon as the said taxes are collected they shall be remitted, less the cost of collecting same, to the treasurer of the county to which said taxes belong, by the treasurer collecting them, and he shall return a certified copy of the certified statement to the auditor of the county to which the taxes belong, together with a certified statement of the amount remitted to the said treasurer. [1961 c 15 § 84.56.170. Prior: 1925 ex.s. c 130 § 92; RRS § 11253; prior: 1899 c 32 § 3.]

84.56.180 Transient trader, taxation of merchandise of. Whenever any person, firm or corporation, shall, subsequent to the first day of January of any year, bring or send into any county from outside the state any stock of goods or merchandise to be sold or disposed of in a place of business temporarily occupied for their sale, without the intention of engaging in permanent trade in such place, the owner, consignee or person in charge of the said goods or merchandise shall immediately notify the county assessor, and thereupon the assessor shall at once proceed to value the said stock of goods and merchandise at its true value, and upon one hundred percent of such valuation the said owner, consignee or person in charge shall pay to the collector of taxes a tax at the rate assessed for state, county and local purposes in the taxing district in the year then current. And it shall not be lawful to sell or dispose of any such goods or merchandise as aforesaid in such taxing district until the assessor shall have been so notified as aforesaid and the tax assessed thereon paid to the collector. Every person, firm or corporation bringing into any county of this state from outside the state any goods or merchandise after

the first day of January shall be deemed subject to the provisions of this section.

This section shall not apply to goods or merchandise consigned to a person for sale at such person's permanent place of business within this state, if such person is required to list such goods or merchandise pursuant to RCW 84.40.185. [1973 1st ex.s. c 195 § 110; 1969 ex.s. c 124 § 5; 1961 c 15 § 84.56.180. Prior: 1939 c 206 § 46; 1925 ex.s. c 130 § 105; RRS § 11266; prior: 1899 c 141 § 12; 1897 c 71 § 84.]

~~Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.~~

~~Effective date—Savings—1969 ex.s. c 124: See notes following RCW 84.36.300.~~

84.56.190 Penalty for failure to notify assessor or pay tax. In case any such owner, consignee or person in charge of such stock of goods and merchandise as is mentioned in RCW 84.56.180, shall fail or neglect to notify the proper assessor, or to pay the said tax as herein required, or shall proceed to sell or dispose of such stock, or any portion thereof, before the payment of the tax levied on account thereof, the owner of such goods or merchandise shall forfeit to the county for the benefit of the taxing districts entitled to said tax, a sum equal to twice the amount of tax assessable as aforesaid on account of such stock. Such forfeiture may be recovered in the same manner as delinquent personal property tax in any court having jurisdiction, to the amount thereof, and in such action the said penalty shall be preferred above all other debts or claims. Any mistake in the name of the owner of the said goods or merchandise shall not affect the right to recover such penalty. [1961 c 15 § 84.56.190. Prior: 1925 ex.s. c 130 § 106; RRS § 11267; prior: 1897 c 71 § 85.]

84.56.200 Removal of timber or improvements on which tax is delinquent—Penalty. It shall be unlawful for any person, firm or corporation to remove any timber from timbered lands, no portion of which is occupied for farming purposes by the owner thereof, or to remove any building or improvements from lands, upon which taxes are delinquent until the taxes thereon have been paid.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor. [1961 c 15 § 84.56.200. Prior: 1925 ex.s. c 130 § 11; RRS § 11115.]

84.56.210 Severance of standing timber assessed as realty—Timber tax may be collected as personalty tax. Whenever standing timber which has been assessed as real estate is severed from the land as part of which it was so assessed, it may be considered by the county assessor as personal property, and the county treasurer shall thereafter be entitled to pursue all of the rights and remedies provided by law for the collection of personal property taxes in the collection of taxes levied against such timber: *Provided*, That whenever the county assessor elects to treat severed timber as personalty under the provisions of this section, he shall immediately give notice by mail to the person or persons charged with the tax of the fact of his election, and the amount of tax

standing against the timber. [1961 c 15 § 84.56.210. Prior: 1939 c 206 § 42; 1929 c 70 § 1; RRS § 11247-1.]

84.56.220 Lien of personalty tax follows insurance. In the event of the destruction of personal property by fire after the date of delinquency of any year, the lien of the personal property tax shall attach to and follow any insurance that may be upon said property and the insurer shall pay to the county treasurer from the said insurance money all taxes, interest and costs that may be due, and or are a lien against the identical property so destroyed. [1961 c 15 § 84.56.220. Prior: 1935 c 30 § 5; 1925 ex.s. c 130 § 87; RRS § 11248; prior: 1921 c 117 § 1; 1911 c 24 § 3.]

84.56.230 Monthly distribution of taxes collected. On the first day of each month the county treasurer shall distribute pro rata, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month, and shall certify the same to the county auditor: *Provided, however,* That the county treasurer, at his option, may distribute the total amount of such taxes collected according to the ratio that the levy of taxes made for each taxing district in the county bears to such total amount collected. On or before the tenth day of each month the county treasurer shall turn over to the respective city treasurers the cities' pro rata share of all taxes collected for the previous month and take receipts therefor in duplicate, and shall certify to the city comptroller or other accounting officer of each such city the amount of such taxes so collected and turned over, and shall deliver with such certificate one copy of the receipt of the city treasurer therefor. [1973 1st ex.s. c 43 § 1; 1961 c 15 § 84.56.230. Prior: 1925 ex.s. c 130 § 93; RRS § 11254; prior: 1890 p 564 § 95.]

84.56.240 Cancellation of uncollectible personalty taxes. If the county treasurer is unable, for the want of goods or chattels whereupon to levy, to collect by distress or otherwise, the taxes, or any part thereof, which may have been assessed upon the personal property of any person or corporation, or an executor or administrator, guardian, receiver, accounting officer, agent or factor, such treasurer shall file with the county auditor, on the first day of January following, a list of such taxes, with an affidavit of himself or of the deputy treasurer entrusted with the collection of said taxes, stating that he had made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same. The county auditor shall deliver such list and affidavit to the board of county commissioners at their first session thereafter, and they shall cancel such taxes as they are satisfied cannot be collected. [1961 c 15 § 84.56.240. Prior: 1925 ex.s. c 130 § 94; RRS § 11255; prior: 1899 c 141 § 8; 1897 c 71 § 72; 1895 c 176 § 16; 1893 c 124 § 73; 1890 p 562 § 88.]

84.56.250 Penalty for wilful noncollection or failure to file delinquent list. If any county treasurer shall wilfully refuse or neglect to collect any taxes assessed upon personal property, where the same is collectible, or to

file the delinquent list and affidavit, as herein provided, he shall be held, in his next settlement with the auditor, liable for the whole amount of such taxes uncollected, and the same shall be deducted from his salary and applied to the several funds for which they were levied. [1961 c 15 § 84.56.250. Prior: 1925 ex.s. c 130 § 95; RRS § 11256; prior: 1897 c 71 § 73; 1893 c 124 § 74; 1890 p 563 § 91.]

84.56.260 Continuing power to collect taxes. The power and duty to levy on property and collect any tax due and unpaid shall continue in and devolve upon the county treasurer and his successors in office after his return to the county auditor, and until the tax is paid; and the warrant attached to the assessment roll shall continue in force and confer authority upon the treasurer to whom the same was issued, and upon his successors in office, to collect any tax due and uncollected thereon. This section shall apply to all assessment rolls and the warrants thereto attached: *Provided,* That taxes imposed but not collected on boats for the years 1980 through 1982 may not be collected. [1984 c 250 § 7; 1961 c 15 § 84.56.260. Prior: 1925 ex.s. c 130 § 96; RRS § 11257; prior: 1897 c 71 § 74; 1893 c 124 § 75.]

84.56.270 Court cancellation of personalty taxes more than four years delinquent. The county treasurer of any county of the state of Washington, after he has first received the approval of the board of county commissioners of such county, through a resolution duly adopted, is hereby empowered to petition the superior court in or for his county to finally cancel and completely extinguish the lien of any delinquent personal property tax which appears on the tax rolls of his county, which is more than four years delinquent, which he attests to be beyond hope of collection, and the cancellation of which will not impair the obligation of any bond issue nor be precluded by any other legal impediment that might invalidate such cancellation. The superior court shall have jurisdiction to hear any such petition and to enter such order as it shall deem proper in the premises. [1984 c 132 § 5; 1961 c 15 § 84.56.270. Prior: 1945 c 59 § 1; Rem. Supp. 1945 § 11265-1.]

84.56.280 Settlement with state for state taxes—Penalty. Immediately after the last day of each month, the county treasurer shall pay over to the state treasurer the amount collected by him and credited to the various state funds, but every such payment shall be subject to correction for error discovered upon the quarterly settlement next following. The county auditor shall at the same time ascertain and report to the department of revenue in writing the amounts due to the various state funds. If they are not paid to the state treasurer before the twentieth day of the month he shall make a sight draft on the county treasurer for such amount. On the first Mondays of January, April, July, and October, respectively, of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes from the date of the last

settlement up to and including the last day of the preceding month. The county auditor shall, on or before the fifteenth day of the month in which such settlement is made, notify the department of revenue of the result of the quarterly settlement with the county treasurer. Should any county treasurer fail or refuse to honor the draft or make payment of the amount thereon, except for manifest error or other good and sufficient cause, he shall be guilty of nonfeasance in office and upon conviction thereof shall be punished according to law. [1979 ex.s. c 86 § 7; 1961 c 15 § 84.56.280. Prior: 1955 c 113 § 2; prior: 1949 c 69 § 1, part; 1933 c 35 § 1, part; 1925 ex.s. c 130 § 97, part; Rem. Supp. 1949 § 11258, part; prior: 1899 c 141 § 9, part; 1897 c 71 § 76, part; 1895 c 176 § 17, part; 1893 c 124 § 77, part; 1890 p 565 § 96, part; Code 1881 § 2942, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

84.56.290 Adjustment with state for reduced or canceled taxes and for taxes on assessments not on the certified assessment list. Whenever any tax shall have been heretofore, or shall be hereafter, canceled, reduced or modified in any final judicial, board of equalization, state board of tax appeals, or administrative proceeding; or whenever any tax shall have been heretofore, or shall be hereafter canceled by sale of property to any irrigation district under foreclosure proceedings for delinquent irrigation district assessments; or whenever any contracts or leases on public lands shall have been heretofore, or shall be hereafter, canceled and the tax thereon remains unpaid for a period of two years, the director of revenue shall, upon receipt from the county treasurer of a certified copy of the final judgment, order, or decree canceling, reducing, or modifying taxes, or of a certificate from the county treasurer of the cancellation by sale to an irrigation district, or of a certificate from the commissioner of public lands and the county treasurer of the cancellation of public land contracts or leases and non-payment of taxes thereon, as the case may be, make corresponding entries and corrections on his records of the state's portion of reduced or canceled tax.

Upon canceling taxes deemed uncollectible, the county commissioners shall notify the county treasurer of such action, whereupon the county treasurer shall deduct on his records the amount of such uncollectible taxes due the various state funds and shall immediately notify the department of revenue of his action and of the reason therefor; which uncollectible tax shall not then nor thereafter be due or owing the various state funds and the necessary corrections shall be made by the county treasurer upon the quarterly settlement next following.

When any assessment of property is made which does not appear on the assessment list certified by the county board of equalization to the state board of equalization the county assessor shall indicate to the county treasurer the assessments and the taxes due therefrom when the list is delivered to the county treasurer on December 15th. The county treasurer shall then notify the department of revenue of the taxes due the state from the assessments which did not appear on the assessment list

certified by the county board of equalization to the state board of equalization. The county treasurer shall make proper accounting of all sums collected as either advance tax, compensating or additional tax, or supplemental or omitted tax and shall notify the department of revenue of the amounts due the various state funds according to the levy used in extending such tax, and those amounts shall immediately become due and owing to the various state funds, to be paid to the state treasurer in the same manner as taxes extended on the regular tax roll. [1987 c 168 § 3; 1979 ex.s. c 86 § 8; 1961 c 15 § 84.56.290. Prior: 1955 c 113 § 3; prior: 1949 c 69 § 1, part; 1933 c 35 § 1, part; 1925 ex.s. c 130 § 97, part; Rem. Supp. 1949 § 11258, part; prior: 1899 c 141 § 9, part; 1897 c 71 § 76, part; 1895 c 176 § 17, part; 1893 c 124 § 77, part; 1890 p 565 § 96, part; Code 1881 § 2942, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

84.56.300 Annual report of collections to county auditor. On the first Monday of January of each year the county treasurer shall balance up the tax rolls in his hands and with which he stands charged on the roll accounts of the county auditor. He shall then report to the county auditor in full the amount of taxes he has collected and specify the amount collected on each fund. He shall also report the amount of taxes that remain uncollected and delinquent upon the tax rolls, which, with his collection and credits on account of errors and double assessments, should balance his roll accounts as he stands charged. He shall then report the amount of collections on account of interest since the taxes became delinquent, and as added by him to the original amounts when making such collections, and with which he is now to be charged by the auditor, such reports to be duly verified by affidavit. [1973 1st ex.s. c 45 § 1; 1961 c 15 § 84.56.300. Prior: 1925 ex.s. c 130 § 98; RRS § 11259; prior: 1899 c 141 § 10; 1897 c 71 § 77; 1895 c 176 § 18; 1893 c 124 § 78; 1890 p 565 § 99.]

84.56.310 Interested person may pay real property taxes. Any person being the owner or having an interest in an estate or claim to real property against which taxes shall have been unpaid may pay the same and satisfy the lien at any time before execution of a deed to said real property. The person or authority who shall collect or receive the same shall give a certificate that such taxes have been so paid to the person or persons entitled to demand such certificate. [1961 c 15 § 84.56.310. Prior: 1925 ex.s. c 130 § 100; RRS § 11261; prior: 1897 c 71 § 79; 1893 c 124 § 84.]

84.56.320 Recovery by occupant or tenant paying realty taxes. When any tax on real property is paid by or collected of any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor or other party in interest, such occupant, tenant or other person may recover by action the amount which such owner, lessor or party in interest ought to have paid, with interest thereon at the rate of ten percent per annum, or he may retain the same from

any rent due or accruing from him to such owner or lessor for real property on which such tax is so paid; and the same shall, until paid, constitute a lien upon such real property. [1961 c 15 § 84.56.320. Prior: 1925 ex.s. c 130 § 102; RRS § 11263; prior: 1897 c 71 § 81; 1893 c 124 § 86; 1890 p 583 § 133.]

84.56.330 Payment by mortgagee or other lien holder. Any person who has a lien by mortgage or otherwise, upon any real property upon which any taxes have not been paid, may pay such taxes, and the interest, penalty and costs thereon; and the receipt of the county treasurer or other collecting official shall constitute an additional lien upon such land, to the amount therein stated, and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument shall be collectible with, or as a part of, and in the same manner as the amount secured by the original lien: *Provided*, That the person paying such taxes shall pay the same as mortgagee or other lien holder and shall procure the receipt of the county treasurer therefor, showing the mortgage or other lien relationship of the person paying such taxes, and the same shall have been recorded with the county auditor of the county wherein the said real estate is situated, within ten days after the payment of such taxes and the issuance of such receipt. It shall be the duty of any treasurer issuing such receipt to make notation thereon of the lien relationship claim of the person paying such taxes. It shall be the duty of the county auditor in such cases to index and record such receipts in the same manner as provided for the recording of liens on real estate, upon the payment to the county auditor of the sum of fifty cents by the person presenting the same for recording: *And provided further*, That in the event the above provision be not complied with, the lien created by any such payment shall be subordinate to the liens of all mortgages or encumbrances upon such real property, which are senior to the mortgage or other lien of the person so making such payment. [1961 c 15 § 84.56.330. Prior: 1933 c 171 § 1; RRS § 11263-1.]

84.56.340 Payment on part of tract or on undivided interest—Division. Any person desiring to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel, or tract, may do so by applying to the county assessor, who must carefully investigate and ascertain the relative or proportionate value said part bears to the whole tract assessed, on which basis the assessment must be divided, and the assessor shall forthwith certify such proportionate value to the county treasurer: *Provided*, That excepting when property is being acquired for public use, or where a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise, no segregation of property for tax purposes shall be made unless all delinquent taxes and assessments on the entire tract have been paid in full: *And provided further*, That where the assessed valuation of the tract to be divided exceeds two thousand dollars a notice by registered mail

must be given by the assessor to the several owners interested in said tract, if known, and if no protest against said division be filed with the county assessor within twenty days from date of notice, the county assessor shall duly certify the proportionate value to the county treasurer. The county treasurer, upon receipt of certification, shall duly accept payment and issue receipt on the apportionment certified by the county assessor. In cases where protest is filed to said division appeal shall be made to the county commissioners at their next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by county commissioners. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole. [1985 c 395 § 4; 1971 ex.s. c 48 § 1; 1961 c 15 § 84.56.340. Prior: 1939 c 206 § 44; 1933 c 171 § 2; 1925 ex.s. c 130 § 103; RRS § 11264; prior: 1899 c 141 § 11; 1897 c 71 § 82; 1893 c 124 § 87; 1890 p 583 § 134. Formerly RCW 84.56.340 and 84.56.350.]

84.56.360 Separate ownership of improvements—Separate payment authorized. In any case where buildings, structures or improvements are held in separate ownership from the fee as a part of which they have been assessed for the purpose of taxation, any person desiring to pay separately the tax upon the buildings, structures or improvements may do so under the provisions of this section, RCW 84.56.370 and 84.56.380. [1961 c 15 § 84.56.360. Prior: 1939 c 155 § 1; RRS § 11264-1.]

84.56.370 Separate ownership of improvements—Procedure for segregation of improvement tax. Such person may apply to the county assessor for a certificate showing the total assessed value of the land together with all buildings, structures or improvements located thereon and the assessed value of the building, structure or improvement the tax upon which the applicant desires to pay. It shall be the duty of the county assessor to issue such certificate of segregation upon written application accompanied by an affidavit attesting to the fact of separate ownership of land and improvements. Upon presentation of such certificate of segregation to the county treasurer, that officer shall segregate the total tax in accordance therewith and accept and receipt for the payment of that proportion of total tax which is shown to be due against any building, structure or improvement upon which the applicant desires to pay. [1961 c 15 § 84.56.370. Prior: 1939 c 155 § 2; RRS § 11264-2.]

84.56.380 Separate ownership of improvements—Segregation or payment not to release lien. A segregation or payment under RCW 84.56.360 and 84.56.370 shall not release the land or the building, structure or improvement paid on from any tax lien to which it would otherwise be subject. [1961 c 15 § 84.56.380. Prior: 1939 c 155 § 3; RRS § 11264-3.]

84.56.390 Treasurer's record of false or erroneous listing to board of equalization. If the county treasurer has reason to believe or is informed that any person has given to the county assessor a false statement of his personal property, or that the county assessor has not returned the full amount of personal property required to be listed in his county, or has omitted or made erroneous return of any property which is by law subject to taxation, or if it comes to his knowledge that there is personal property which has not been listed for taxation for the current year, he shall prepare a record setting out the facts with reference thereto and file such record with the county board of equalization. The county board of equalization shall reconvene in June on a day fixed by the board for the purpose of considering such matters as appear in the record filed by the treasurer and may issue compulsory process and require the attendance of any person having knowledge of the articles or value of the property erroneously or fraudulently returned, and examine such person on oath in relation to the statement or return of assessment, and the board shall in all such cases notify every person affected before making a finding, so that he may have an opportunity of showing that his statement or the return of the assessor is correct. [1965 c 93 § 1; 1961 c 15 § 84.56.390. Prior: 1955 c 112 § 2; prior: 1925 ex.s. c 130 § 107, part; RRS § 11268, part; prior: 1915 c 122 § 2, part; 1897 c 71 § 86, part; 1895 c 176 § 22, part; 1893 c 124 § 89, part.]

84.56.400 Treasurer's record of manifest errors in listing—June meeting of board of equalization—Cancellation or correction of assessments—Consideration by board. The county treasurer shall also make and file with the county board of equalization a record, setting forth the facts relating to such manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of property which do not involve a revaluation of property, such as the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family, as shall come to his attention after the rolls have been turned over to him for collection. The said record shall also set forth by legal description all property belonging exclusively to the state, any county or any municipal corporation whose property is exempt from taxation, upon which there remains, according to the tax roll, any unpaid taxes.

The county board of equalization at its meeting in June shall consider such matters as appear in the record filed with it by the county treasurer, and shall only correct such matters as are set forth in such record, but it shall have no power to change or alter the assessment of any person, or change the aggregate value of the taxable property of the county, except insofar as it is necessary to correct the errors hereinbefore mentioned: *Provided*, That the board shall cancel all unpaid taxes upon property which belongs exclusively to the state, any county or municipal corporation. The board shall make findings of the facts upon which it bases its decision on all matters submitted to it, and when so made the assessment and

levy shall have the same force as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified.

The board at its June meeting shall consider only matters referred to it by the records of the county treasurer or county assessor under this section and RCW 84.56.390.

The county assessor may cancel or correct assessments which are erroneous due to manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of the property which do not involve a revaluation of property. When the county assessor cancels or corrects an assessment he shall send a notice to the taxpayer by certified mail with return receipt requested advising the taxpayer, and the person making payments if that person is to be notified pursuant to RCW 84.40.045, as now existing or hereafter amended, that the action of the county assessor is not final, and shall be considered at the June meeting of the county board of equalization, and that such notice shall constitute legal notice of such fact, and a copy of the notice shall be sent to the county treasurer as his authority for correcting the current tax roll. When the county assessor cancels or corrects an assessment, he shall prepare and file a record of such action with the county board of equalization, setting forth therein the facts relating to such manifest error.

The county board of equalization at its meeting in June shall consider such matters as appear in the record filed with it by the county assessor and shall determine whether the action of the county assessor was justified, and shall make findings of facts upon which it bases its decision on all matters submitted to it. If the county board of equalization finds that the action of the assessor was not correct, it shall issue a supplementary roll including such corrections as are necessary, and the assessment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the supplementary roll. [1975 1st ex.s. c 160 § 1; 1970 ex.s. c 55 § 13; 1965 c 93 § 2; 1961 c 15 § 84.56.400. Prior: 1955 c 112 § 3; prior: 1925 ex.s. c 130 § 107, part; RRS § 11268, part; prior: 1915 c 122 § 2, part; 1897 c 71 § 86, part; 1895 c 176 § 22, part; 1893 c 124 § 89, part.]

Effective date—1970 ex.s. c 55: See note following RCW 84.36.050.

84.56.430 Relisting and relevy of tax adjudged void. If any tax or portion of any tax heretofore or hereafter levied on any property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding connected with either the assessment, listing, equalization, levying or collection thereof, or failure of any taxing, assessing or equalizing officer or board to give notice of any hearing or proceeding connected therewith, or, if any such tax or any portion of any such tax heretofore or hereafter levied has heretofore or is hereafter recovered back after payment by reason of any such erroneous proceedings, the amount of such tax or portion of such tax which should

have been paid upon such property except for such erroneous proceeding, shall be added to the tax levied on such property for the year next succeeding the entry of final judgment adjudging such tax or portion of tax to have been void. If any tax or portion of a tax levied against any property for any year has been, or is hereafter adjudged void because of any such erroneous proceeding as hereinbefore set forth, the county and state officers authorized to levy and assess taxes on said property shall proceed, in the year next succeeding, to relist and reassess said property and to reequalize such assessment, and to relevy and collect the taxes thereon as of the year that said void tax or portion of tax was levied, in the same manner, and with the same effect as though no part of said void tax had ever been levied or assessed upon said property: *Provided*, That such tax as reassessed and releved shall be figured and determined at the same tax-rate as such erroneous tax was or should have been figured and determined, and in paying the tax so reassessed and releved the taxpayer shall be credited with the amount of any taxes paid upon property retaxed for the year or years for which the reassessment is made. [1961 c 15 § 84.56.430. Prior: 1927 c 290 § 1; 1925 ex.s. c 130 § 108; RRS § 11269; prior: 1897 c 71 § 87; 1893 c 124 § 90. Formerly RCW 84.24.080.]

Chapter 84.60 LIEN OF TAXES

Sections

84.60.010	Priority of tax lien.
84.60.020	Attachment of tax liens.
84.60.040	Charging personalty tax against realty.
84.60.050	Acquisition by governmental unit of property subject to tax lien or placement under agreement or order of immediate possession or use—Effect.
84.60.070	Acquisition by governmental unit of property subject to tax lien or placement under agreement or order of immediate possession or use—Segregation of taxes if only part of parcel required.

84.60.010 Priority of tax lien. All taxes and levies which may hereafter be lawfully imposed or assessed shall be and they are hereby declared to be a lien respectively upon the real and personal property upon which they may hereafter be imposed or assessed, which liens shall include all charges and expenses of and concerning the said taxes which, by the provisions of this title, are directed to be made. The said lien shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which said real and personal property may become charged or liable. [1969 ex.s. c 251 § 1; 1961 c 15 § 84.60.010. Prior: 1925 ex.s. c 130 § 99; RRS § 11260; prior: 1897 c 71 § 78; 1895 c 176 § 19; 1893 c 124 § 79; 1890 p 584 § 135.]

84.60.020 Attachment of tax liens. The taxes assessed upon real property, including mobile homes assessed thereon, and other mobile homes as defined in RCW 82.50.010 shall be a lien thereon from and including the first day of January in the year in which

they are levied until the same are paid, but as between the grantor or vendor and the grantee or purchaser of any real property or any such mobile home, when there is no express agreement as to payment of the taxes thereon due and payable in the calendar year of the sale or the contract to sell, the grantor or vendor shall be liable for the same proportion of such taxes as the part of the calendar year prior to the day of the sale or the contract to sell bears to the whole of such calendar year, and the grantee or purchaser shall be liable for the remainder of such taxes and subsequent taxes. The lien for the property taxes assessed on a mobile home shall be terminated and absolved for the year subsequent to the year of its removal from the state, when notice is given to the county treasurer describing the mobile home, if all property taxes due at the time of removal are satisfied. The taxes assessed upon each item of personal property assessed shall be a lien upon such personal property except mobile homes as above provided from and after the date upon which the same is listed with and valued by the county assessor, and no sale or transfer of such personal property shall in any way affect the lien for such taxes upon such property. The taxes assessed upon personal property shall be a lien upon each item of personal property of the person assessed, distrained by the treasurer as provided in RCW 84.56.070, from and after the date of the distraint and no sale or transfer of such personal property so distrained shall in any way affect the lien for such taxes upon such property. The taxes assessed upon personal property shall be a lien upon the real property of the person assessed, selected by the county treasurer and designated and charged upon the tax rolls as provided in RCW 84.60.040, from and after the date of such selection and charge and no sale or transfer of such real property so selected and charged shall in any way affect the lien for such personal property taxes upon such property. [1985 c 395 § 5; 1977 ex.s. c 22 § 8; 1961 c 15 § 84.60.020. Prior: 1943 c 34 § 1; 1939 c 206 § 45; 1935 c 30 § 7; 1925 ex.s. c 130 § 104; Rem. Supp. 1943 § 11265; prior: 1903 c 59 § 3; 1897 c 71 § 83; 1895 c 176 § 21; 1893 c 124 § 88. Formerly RCW 84.60.020 and 84.60.030.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

84.60.040 Charging personalty tax against realty. When it becomes necessary, in the opinion of the county treasurer, to charge the tax on personal property against real property, in order that such personal property tax may be collected, such county treasurer shall select for that purpose some particular tract or lots of real property owned by the person owing such personal property tax, and in his tax roll and certificate of delinquency shall designate the particular tract or lots of real property against which such personal property tax is charged, and such real property shall be chargeable therewith. [1961 c 15 § 84.60.040. Prior: 1925 ex.s. c 130 § 112, part; RRS § 11273, part; prior: 1897 c 71 § 93, part; 1893 c 124 § 97, part.]

84.60.050 Acquisition by governmental unit of property subject to tax lien or placement under agreement or

order of immediate possession or use—Effect. (1) When real property is acquired by purchase or condemnation by the state of Washington, any county or municipal corporation or is placed under a recorded agreement for immediate possession and use or an order of immediate possession and use pursuant to RCW 8.04.090, such property shall continue to be subject to the tax lien for the years prior to the year in which the property is so acquired or placed under such agreement or order, of any tax levied by the state, county, municipal corporation or other tax levying public body, except as is otherwise provided in RCW 84.60.070.

(2) The lien for taxes applicable to the real property being acquired or placed under immediate possession and use for the year in which such real property is so acquired or placed under immediate possession and use shall be for only the pro rata portion of taxes allocable to that portion of the year prior to the date of execution of the instrument vesting title, date of recording such agreement of immediate possession and use, date of such order of immediate possession and use, or date of judgment. No taxes levied or tax lien on such property allocable to a period subsequent to the dates identified in this subsection shall be valid and any such taxes levied shall be canceled as provided in RCW 84.56.400. In the event the owner has paid taxes allocable to that portion of the year subsequent to the dates identified in this subsection he shall be entitled to a pro rata refund of the amount paid on the property so acquired or placed under a recorded agreement or an order of immediate possession and use. If the dates identified in this subsection precede February 15th of the year in which such taxes become payable, no lien for such taxes shall be valid and any such taxes levied but not payable shall be canceled as provided in RCW 84.56.400. [1971 ex.s. c 260 § 2; 1967 ex.s. c 145 § 36; 1961 c 15 § 84.60.050. Prior: 1957 c 277 § 1.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Exemption of property under order of immediate possession and use: RCW 84.36.010.

84.60.070 Acquisition by governmental unit of property subject to tax lien or placement under agreement or order of immediate possession or use—Segregation of taxes if only part of parcel required. When only part of a parcel of real property is required by a public body either of the parties may require the assessor to segregate the taxes and the assessed valuation as between the portion of property so required and the remainder thereof. If the assessed valuation of the portion of the property not required exceeds the amount of all delinquent taxes and taxes payable on the entire parcel, and if the owner so elects the lien for the taxes owing and payable on all the property shall be set over to the property retained by the owner. All county assessors are hereby authorized and required to segregate taxes as provided above. [1971 ex.s. c 260 § 3; 1961 c 15 § 84.60.070. Prior: 1957 c 277 § 3.]

Chapter 84.64

CERTIFICATES OF DELINQUENCY

Sections	
84.64.010	Determination by county commissioners as to issuance—Form of certificate.
84.64.020	Interest rate—Probative force of certificate.
84.64.030	Foreclosure—Notice and summons—Cost to be included in redemption—Prohibition on issuance of certificate on certain residential property.
84.64.040	Prosecuting attorney to foreclose on request.
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84.64.450	Tax deeds to cities and towns absolute despite reversionary provision.
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84.64.010 Determination by county commissioners as to issuance—Form of certificate. On the first business day after the expiration of the eleven months after the taxes charged against any real property are delinquent, the board of county commissioners shall determine whether it will be for the best interest of the county to carry or further carry the delinquent taxes on the books of the county or to permit certificates of delinquency for the same to be sold to any person, and should it be deemed advisable to permit the sale of certificates of delinquency they shall pass a resolution to that effect and publish a copy of the same in the next issue of the official newspaper of the county and on the first day of the month next following, the treasurer shall have the right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property and such certificate or certificates shall be numbered and have a stub, which shall be a summary of the certificate, and shall contain a statement.

- (1) Description of the property assessed.
- (2) Year or years for which assessed.
- (3) Amount of tax and interest due.
- (4) Name of owner, or reputed owner, if known.
- (5) Rate of interest the certificates shall bear.
- (6) The time when a deed may be had, if not sooner redeemed.

(7) A guaranty of the county or municipality to which the tax is due that if for any irregularity of the taxing officers this certificate be void, then such county or municipality will repay the holder the sum paid thereon with interest at rate of six percent per annum from the date of the issuance: *Provided*, That nothing herein contained shall prevent the running of interest during the said period of twelve months from the date of delinquency, at the rate of interest provided by law on delinquent taxes: *Provided, further*, That all certificates of delinquency sold to persons shall be registered by the county treasurer in a book provided for that purpose, in which shall also be recorded the name and address of the purchaser of each certificate of delinquency. Thereafter at any time before the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency issued to a person, the owner of the property may pay to the county treasurer the amount of taxes due for one or more subsequent years, with delinquent interest, if any, to the date of payment, and if the same shall have been paid by the holder of the certificates of delinquency the county treasurer shall forward the amount of payment or payments made by such owner to the holder of the certificate of delinquency at his registered address. The payment of taxes for such subsequent year or years shall thereby extend the time of the foreclosure of the particular certificate of delinquency one year for each subsequent year's taxes so paid. [1961 c 15 § 84.64.010. Prior: 1925 ex.s. c 130 § 113; RRS § 11274; prior: 1917 c 142 § 2; 1907 c 206 § 1; 1903 c 181 § 1; 1897 c 71 § 94.]

Private certificate holder for general taxes takes subject to local assessments: RCW 35.49.120.

84.64.020 Interest rate—Probative force of certificate. Certificates of delinquency shall bear interest from the date of issuance till redeemed, at the rate of twelve percent per annum, and shall be sold to any person applying therefor, upon the payment of the value in principal and interest thereof: *Provided*, That when, from the failure of the taxing officers to do or perform any act in listing or assessing property, or in issuing such certificates, the same is declared void and the same is redeemed by the county or municipality issuing the same, such rate of interest shall be six percent per annum.

Certificates of delinquency shall be prima facie evidence that:

- (1) The property described was subject to taxation at the time the same was assessed;
- (2) The property was assessed as required by law;
- (3) The taxes or assessments were not paid at any time before the issuance of the certificate;
- (4) Such certificate shall have the same force and effect as a judgment execution and sale of and against the premises included therein. [1961 c 15 § 84.64.020. Prior: 1925 ex.s. c 130 § 114; RRS § 11275; prior: 1917 c 142 § 3; 1897 c 71 § 95.]

84.64.030 Foreclosure—Notice and summons—Cost to be included in redemption—Prohibition on issuance of certificate on certain residential property. Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice and summons to the owner of the property described in such certificate, and any person having a recorded interest in or lien of record upon the property, that he or she will apply to the superior court of the county in which such property is situated for a judgment foreclosing the lien against the property mentioned therein. Such notice and summons shall contain:

- (1) The title of the court, the description of the property and the name of the owner thereof, if known, the name of the holder of the certificate, the date thereof, and the amount for which it was issued, the year or years for the delinquent taxes for which it was issued, the amount of all taxes paid for prior or subsequent years, and the rate of interest on said amount.
- (2) A direction to the owner summoning him or her to appear within sixty days after service of the notice and summons, exclusive of the day of service, and defend the action or pay the amount due, and when service is made by publication a direction to the owner, summoning him or her to appear within sixty days after the date of the first publication of the notice and summons, exclusive of the day of said first publication, and defend the action or pay the amount due.
- (3) A notice that, in case of failure so to do, judgment will be rendered foreclosing the lien of such taxes and costs against the land and premises named.

The notice and summons shall be subscribed by the holder of the certificate of delinquency, or by someone in his or her behalf, and residing within the state of Washington, and upon whom all process may be served.

A copy of said notice and summons shall be delivered to the county treasurer. Thereafter when any owner of real property or person interested therein seeks to redeem as provided in RCW 84.64.070, the treasurer shall ascertain the amount of costs accrued in foreclosing said certificate and include said costs as a part of the redemption required to be paid. Cost incurred for a title search required by RCW 84.64.050 shall be included.

The notice and summons shall be served in the same manner as a summons in a civil action is served in the superior court.

The county treasurer shall not issue certificates of delinquency upon property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW. [1984 c 220 § 18; 1984 c 179 § 1; 1981 c 322 § 3; 1972 ex.s. c 84 § 1; 1961 c 15 § 84.64.030. Prior: 1925 ex.s. c 130 § 115; RRS § 11276; prior: 1901 c 178 § 1; 1899 c 141 § 13; 1897 c 71 §§ 96, 97.]

Reviser's note: This section was amended by 1984 c 179 § 1 and by 1984 c 220 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

84.64.040 Prosecuting attorney to foreclose on request. The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment and forms of notice and summons when the same are required, and shall prosecute to final judgment all actions brought by holders of certificates under the provisions of this chapter for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: *Provided*, Said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per RCW 84.64.120: *Provided, further*, That nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and RCW 84.64.120: *And provided, also*, That in no event shall the county prosecuting attorney collect any fee for the services herein enumerated. [1961 c 15 § 84.64.040. Prior: 1925 ex.s. c 130 § 116; RRS § 11277; prior: 1903 c 165 § 1; 1899 c 141 § 14.]

84.64.050 Certificate to county—Foreclosure—Notice—Prohibition on issuance of certificate on certain residential property. After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on said property to the county for all years' taxes, interest, and costs: *Provided*, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs

to a minimum of the taxes, interest, and costs for the earliest year.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer.

The change to a three-year grace period shall first be effective on May 1, 1983. Prior to that date, the county treasurer shall send a notice to all taxpayers with taxes delinquent for two years or more, notifying them of the change in the grace period. The treasurer shall file said certificates when completed with the clerk of the court, and the treasurer shall thereupon, with such legal assistance as the county legislative authority shall provide in counties having a population of thirty thousand or more, and with the assistance of the county prosecuting attorney in counties having a population of less than thirty thousand, proceed to foreclose in the name of the county, the tax liens embraced in such certificates, and the same proceedings shall be had as when held by an individual: *Provided*, That notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action. Either (1) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (2) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. In addition to describing the property as the same is described on the tax rolls, the notice must include the local street address, if any. It shall be the duty of the county treasurer to mail a copy of the published summons, within fifteen days after the first publication thereof, to the treasurer of each city or town within which any property involved in a tax foreclosure is situated, but the treasurer's failure to do so shall not affect the jurisdiction of the court nor the priority of any tax sought to be foreclosed. Said certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against said property may be brought in one action and all persons interested in any of the property involved in said proceedings may be made codefendants in said action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of said property shall be considered and treated as the owner or owners of said property for the purpose of this section, and if upon said treasurer's rolls it appears that the owner or owners of said property are unknown, then said property shall be

proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of said proceedings and of any and all steps thereunder: *Provided*, That prior to the sale of the property, if such property is shown on the tax rolls under unknown owners or as having an assessed value of three thousand dollars or more, the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of said property for the purpose of this section, and shall be entitled to the notice provided for in this section.

The county treasurer shall not issue certificates of delinquency upon property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW. [1986 c 278 § 64. Prior: 1984 c 220 § 19; 1984 c 179 § 2; 1981 c 322 § 4; 1972 ex.s. c 84 § 2; 1961 c 15 § 84.64.050; prior: 1937 c 17 § 1; 1925 ex.s. c 130 § 117; RRS § 11278; prior: 1917 c 113 § 1; 1901 c 178 § 3; 1899 c 141 § 15; 1897 c 71 § 98.]

Severability—1986 c 278: See note following RCW 36.01.010.
Notice of foreclosure to be given to city treasurer: RCW 35.49.130.

84.64.060 Payment by interested person before day of sale. Any person owning an interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the day of the sale; and for the amount so paid he shall have a lien on the property liable for taxes, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. [1963 c 88 § 1; 1961 c 15 § 84.64.060. Prior: 1925 ex.s. c 130 § 118; RRS § 11279; prior: 1897 c 71 § 99.]

84.64.070 Redemption before day of sale—Redemption of property of minors or insane persons. Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the day of the sale, by payment, in legal money of the United States, to the county treasurer of the proper county, for the benefit of the owner of the certificate of delinquency against said property, of the amount for which the certificate of delinquency was sold, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of said certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, interest and costs accruing after the issuance of

such certificate of delinquency, and paid by the holder of said certificate of delinquency or his assignee, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made. No fee shall be charged for any redemption. Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in this section for the redemption of real property other than that of insane persons and minor heirs. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject, however, to the right of the person making the same to be reimbursed by the person benefited. If the real property of any minor, or any insane person, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the issuance of the tax deed upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf. [1963 c 88 § 2; 1961 c 15 § 84.64.070. Prior: 1925 ex.s. c 130 § 119; RRS § 11280; prior: 1917 c 142 § 4; 1899 c 141 § 17; 1897 c 71 § 102; 1895 c 176 § 25; 1893 c 124 § 121.]

84.64.080 Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording. The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or said court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases said court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with

the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in said notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. Said order shall be signed by the judge of the superior court and attested by the clerk thereof, and a certified copy of said order, together with the list of the property therein ordered sold, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell said property for said sum as set forth in said order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. All sales shall be made at such place on county property as the county legislative authority may direct on Friday between the hours of 9 o'clock in the morning and 9 o'clock in the evening, as the county legislative authority may direct, and shall continue from day to day (Saturdays and Sundays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of said treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of _____ in the state of Washington, and an order of sale duly issued by said court, entered the _____ day of _____, _____, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the _____ day of _____, _____, at _____ o'clock a.m., at _____ in the city of _____, and county of _____, state of Washington, sell the following described lands or lots, to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due thereon as follows, to wit: (Description of property.)

In witness whereof, I have hereunto affixed my hand and seal this _____ day of _____, _____.

Treasurer of _____
county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

The treasurer may include in one notice any number of separate tracts or lots.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the entire amount of the taxes and interest due upon the whole property included in the certificate of delinquency, the excess shall be refunded, on application therefor, to the record owner of the property. In the event no claim for the said excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of _____ } ss.

This indenture, made this _____ day of _____, _____, between _____, _____, as treasurer of _____ county, state of Washington, party of the first part, and _____, _____, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the _____ day of _____, _____, pursuant to a real property tax judgment entered in the superior court in the county of _____ on the _____ day of _____, _____, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by said court, _____ duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that said _____ has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for said real property.

Now, therefore, know ye, that, I _____, county treasurer of said county of _____, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto _____, his or her heirs and assigns, forever, the said real property hereinbefore described.

Given under my hand and seal of office this -----
day of -----, A.D. -----

County Treasurer.

[1981 c 322 § 5; 1965 ex.s. c 23 § 4; 1963 c 8 § 1; 1961 c 15 § 84.64.080. Prior: 1951 c 220 § 1; 1939 c 206 § 47; 1937 c 118 § 1; 1925 ex.s. c 130 § 20; RRS § 11281; prior: 1909 c 163 § 1; 1903 c 59 § 5; 1899 c 141 § 18; 1897 c 71 § 103; 1893 c 124 § 105; 1890 p 573 § 112; Code 1881 § 2917. Formerly RCW 84.64.080, 84.64-.090, 84.64.100, and 84.64.110.]

Validation—1963 c 8: "All rights acquired or any liability or obligation incurred under the provisions of this section prior to February 18, 1963, or any process, proceeding, order, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, or any certificate of delinquency, tax deed or other instrument given or executed thereunder, or any claim or refund thereunder, or any sale or other proceeding thereunder are hereby declared valid and of full force and effect." [1963 c 8 § 2.]

84.64.120 Appeal to supreme court or court of appeals—Deposit. Appeals from the judgment of the court may be taken to the supreme court or the court of appeals at any time within thirty days after the rendition of said judgment by giving notice thereof orally in open court at the time of the rendition of the judgment, or by giving written notice thereof at any time thereafter, and within thirty days from the date of the rendition of such judgment, and the party taking such appeal shall execute, serve and file a bond payable to the state of Washington, with two or more sureties, to be approved by the court, in an amount to be fixed by the court, conditioned that the appellant shall prosecute his said appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause, which bond shall be so served and filed at the time of the service of said notice of appeal, and the respondent may, within five days after the service of such bond, object to the sureties thereon, or to the form and substance of such bond, in the court in which the action is pending, and if, upon hearing of such objections to said bond, it is determined by the court that the sureties thereon are insufficient for any reason, or that the bond is defective for any other reason, the court shall direct a new bond to be executed with sureties thereon, to be justified as provided by law, but no appeal shall be allowed from any judgment for the sale of land or lot for taxes, and no bond given on appeal as herein provided shall operate as a supersedeas, unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the county treasurer of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order

that the amount deposited with the treasurer as aforesaid, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in said proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, penalties, interest and costs, or any part thereof, in said proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made. [1971 c 81 § 154; 1961 c 15 § 84.64.120. Prior: 1925 ex.s. c 130 § 121; RRS § 11282; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106.]

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

84.64.130 Certified copies of records as evidence. The books and records belonging to the office of county treasurer, certified by said treasurer, shall be deemed prima facie evidence to prove the issuance of any certificate, the sale of any land or lot for taxes, the redemption of the same or payment of taxes thereon. The county treasurer shall, at the expiration of his term of office, pay over to his successor in office all moneys in his hands received for redemption from sale for taxes on real property. [1961 c 15 § 84.64.130. Prior: 1925 ex.s. c 130 § 123; RRS § 11284; prior: 1897 c 71 § 108; 1893 c 124 § 123.]

84.64.140 Erroneous sales. Whenever it shall be made to appear to the satisfaction of a county treasurer that any tract or lot was sold which was not subject to be taxed or upon which taxes have been paid previous to the sale, he shall make an entry opposite to such tracts

or lots in the sale or redemption record that the same was erroneously sold, and such entry shall be prima facie evidence of the fact therein stated. [1961 c 15 § 84.64-.140. Prior: 1925 ex.s. c 130 § 124; RRS § 11285.]

84.64.145 Error by county officer or employee in creating tax lien—Return of property sold or about to be sold to rightful owner—Procedure. On order of the board of county commissioners or other legislative authority of any county, property sold or in the process of being sold to satisfy a tax lien against such property where such lien resulted from an error made by an officer or employee of the county, shall be returned to the rightful owner thereof: *Provided*, That no order shall be issued more than one year following the date of issuance of the tax deed. If the property has already been sold, the county shall:

(1) Commence an action for the recovery of the property;

(2) Refund to the buyer the purchase price plus the reasonable value of all improvements to the property made in good faith by the buyer and less the value of the use thereof; and

(3) Require the rightful owner to pay the reasonable value of all improvements to the property made in good faith by the buyer less the value of the use thereof.

If the property is in the process of being sold, the county shall take immediate steps to halt such sale and shall declare the title of the rightful owner clear, free of such tax lien. [1972 ex.s. c 84 § 4.]

84.64.150 Private certificate holder to pay subsequent taxes. Every purchaser of a certificate of delinquency shall before applying for judgment, pay all taxes that have accrued on the property included in said certificate since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and any purchaser of delinquent certificates that shall suffer a subsequent tax to become delinquent and a subsequent certificate of delinquency to issue on the same property included in his certificate, such first purchaser shall forfeit his rights thereunder to the subsequent purchaser, and such subsequent purchaser shall at the time of his obtaining his certificate redeem said first certificate of delinquency outstanding by depositing with the county treasurer the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of delinquency and draw interest at the rate of twelve percent per annum from the date of payment. Said holder of a certificate of delinquency permitting a subsequent certificate to issue on the same property, shall, on notice from the county treasurer, surrender said certificate of delinquency on payment to him of the redemption money paid by the subsequent purchaser: *Provided*, That this section shall not apply to counties or municipalities. [1961 c 15 § 84-.64.150. Prior: 1925 ex.s. c 130 § 122; RRS § 11283; prior: 1917 c 142 § 5; 1899 c 141 § 20; 1897 c 71 § 107; 1893 c 124 § 122.]

84.64.160 Certificate of redemption—Claims released by. The receipt of the redemption money of any tract or lot by any purchaser, or by the county treasurer for the benefit of such purchaser or the return of the certificate of delinquency for cancellation, shall operate as a release of all the claims to said tract under or by virtue of the issuance of said certificate of delinquency, and the county treasurer, upon the receipt of any such redemption money, shall immediately endorse upon the proper records the fact that such taxes, interest and costs have been paid and the property therein described redeemed by said payment, and shall deliver to the person redeeming the same a certificate of redemption therefor. [1961 c 15 § 84.64.160. Prior: 1925 ex.s. c 130 § 125; RRS § 11286; prior: 1899 c 141 § 22; 1897 c 71 § 111; 1893 c 124 § 126.]

84.64.170 Redemptioner to pay cost of publication. In case any person shall be compelled to publish a notice in a newspaper under the provisions of this chapter, then, before any person who may have a right to redeem lands or lots from sale shall be permitted to redeem, he shall pay to the officer who by law is authorized to receive such redemption money the amount paid for publishing such notice for the use of the person compelled to publish such notice, as aforesaid, the fee for such publication. [1961 c 15 § 84.64.170. Prior: 1925 ex.s. c 130 § 126; RRS § 11287; prior: 1897 c 71 § 112; 1893 c 124 § 129.]

84.64.180 Deeds as evidence—Estoppel by judgment. Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the real property thereby conveyed of the following facts: First, that the real property conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real property was sold for taxes, interest and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real property sold for delinquent taxes rendered after January 9, 1926, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax has been paid, or the real property was not liable to the tax. [1961 c 15 § 84.64-.180. Prior: 1925 ex.s. c 130 § 127; RRS § 11288; prior: 1897 c 71 § 114; 1893 c 124 § 132; 1890 p 574 § 114.]

84.64.190 Certified copy of deed as evidence. Whenever it shall be necessary in any action in any court of law or equity, wherein the title to any real property is in controversy, to prove the conveyance to any county of such real property in pursuance of a foreclosure of a tax certificate and sale thereunder, a copy of the tax deed issued to the county containing a description of such real property, exclusive of the description of all other real property therein described, certified by the county auditor of the county wherein the real property is situated, to be such, shall be admitted in evidence by the court, and shall be proof of the conveyance of the real property in controversy to such county, to the same extent as would a certified copy of the entire record of such tax deed. [1961 c 15 § 84.64.190. Prior: 1925 ex.s. c 130 § 128; RRS § 11289; prior: 1890 p 575 § 115.]

84.64.200 Prior taxes deemed delinquent—County as bidder at sale—Purchaser to pay all delinquent taxes, interest, or costs. All lots, tracts and parcels of land upon which taxes levied prior to January 9, 1926 remain due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were levied shall be deemed to be delinquent under the provisions of this title, and the same proceedings may be had to enforce the payment of such unpaid taxes, with interest and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this chapter. For the purposes of foreclosure under this chapter, the date of delinquency shall be construed to mean the date when the taxes first became delinquent. At all sales of property for which certificates of delinquency are held by the county, if no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest and costs due thereon, and where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this chapter; all bidders except the county at sales of property for which certificates of delinquency are held by the county shall pay the full amount of taxes, interest and costs for which judgment is rendered, together with all taxes, interest and costs which are delinquent at the time of sale, regardless of whether the taxes, interest, or costs are included in the judgment. [1981 c 322 § 6; 1961 c 15 § 84.64.200. Prior: 1925 ex.s. c 130 § 129; RRS § 11290; prior: 1901 c 178 § 4; 1899 c 141 § 24; 1897 c 71 § 116; 1893 c 124 § 136.]

84.64.210 Fees of officers. (1) The treasurer shall upon the issuance of a certificate of delinquency collect fifty cents. (2) For making a deed, to include not more than ten tracts or lots, including all services rendered, including sales and posting notices, three dollars. (3) The clerk of the court shall upon filing application for judgment and for all services rendered to and including judgments, collect two dollars. (4) The clerk of the court shall collect from each contestant at time of filing such contest, five dollars. [1961 c 15 § 84.64.210. Prior: 1925 ex.s. c 130 § 130; RRS § 11291; prior: 1899 c 141 § 26;

1897 c 71 § 119. FORMER PART OF SECTION: 1947 c 60 § 1 now codified as RCW 84.64.215.]

84.64.215 Recording deed—Fee—Transmittal to county auditor and purchaser. In addition to the fees required to be collected by the county treasurer for the issuance of a deed upon the sale of general tax title property, the treasurer shall collect the proper recording fee. This fee together with the deed shall then be transmitted by the treasurer to the county auditor who will record the same and mail the deed to the purchaser. [1961 c 15 § 84.64.215. Prior: 1947 c 60 § 1; Rem. Supp. 1947 § 11295a. Formerly RCW 84.64.210, part.]

84.64.220 County held tax—title property exempt. All property deeded to the county under the provisions of this chapter shall be stricken from the tax rolls as county property and exempt from taxation and shall not be again assessed or taxed while the property of the county. [1961 c 15 § 84.64.220. Prior: 1925 ex.s. c 130 § 131; RRS § 11292; prior: 1899 c 141 § 27.]

84.64.230 Disposition of proceeds of sales. No claims shall ever be allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this chapter, but all taxes shall at the time of deeding said property be thereby canceled: *Provided*, That the proceeds of any sale of any property acquired by the county by tax deed shall be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection. [1961 c 15 § 84.64.230. Prior: 1925 ex.s. c 130 § 132; RRS § 11293; prior: 1899 c 141 § 28.]

84.64.240 Payment of taxes by mistake. If any property owner shall pay taxes on the property of another by mistake of any kind, and the owner of such property fails or refuses, after thirty days' demand, to reimburse such payer before the date on which the delinquency certificates are issued, as provided in this chapter, the payer, or his assignee, may surrender the tax receipt given for such tax payment to the county treasurer and take a certificate of delinquency in lieu thereof, on payment of the accrued interest thereon. [1961 c 15 § 84.64.240. Prior: 1925 ex.s. c 130 § 135; RRS § 11296; prior: 1897 c 71 § 120.]

84.64.270 Sales of tax—title property—Reservations—Notices—Installment contracts—Separate sale of reserved resources. Real property heretofore or hereafter acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the members of the legislative authority they deem it for the best interests of the county to sell the same. When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts

of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in said lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of said resources as it may determine and from which units such reservations shall apply, and directing the county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority: *Provided*, That the said order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit. It shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper printed and published in the county where the land is situated: *Provided*, That in counties where there is no newspaper published, the treasurer of such county shall cause such notice to be published in some newspaper in the state of general circulation in such county having no resident newspaper, said notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in said order, together with the time and place and terms of sale, which said sale shall be made at such place on county property as the county legislative authority may direct in the county in which the land is situated and at such time between the hours of 9 o'clock a.m. and 9 o'clock p.m. as the county legislative authority may direct, and all sales so made shall be to the highest and best bidder at such sale, and sales to be made under the provisions of this chapter may be adjourned from day to day by the county treasurer by public announcement made by the treasurer at the time and place designated in the notice of such sale, or at the time and place to which said sale may be adjourned. The person making the bid shall state whether he or she will pay cash for the amount of his bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of said property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of said sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of said purchase price in ten equal annual installments commencing November 1st and each year following the date of said sale, and shall require said purchaser to pay twelve percent interest on all deferred payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. Said contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against said property subsequent to

the date of said contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him that the said contract may be forfeited and terminated at the election of the vendor, and that in event of said election all sums theretofore paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of said contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering said property upon the payment in full of the purchase price, plus accrued interest: *Provided further*, That the county legislative authority may, by order entered in its records, direct said coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land: *Provided further*, That any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county. [1981 c 322 § 7; 1965 ex.s. c 23 § 5; 1961 c 15 § 84.64.270. Prior: 1945 c 172 § 1; 1937 c 68 § 1; 1927 c 263 § 1; 1925 ex.s. c 130 § 133; Rem. Supp. 1945 § 11294; prior: 1903 c 59 § 1; 1899 c 141 § 29; 1890 p 579 § 124; Code 1881 § 2934. Formerly RCW 84.64.270, 84.64.280, and 84.64.290.]

City may acquire property from county before resale: RCW 35.49.150.
Disposition of proceeds upon resale
generally: RCW 35.49.160.
of property subject to diking, drainage or sewerage improvement district assessments: RCW 85.08.500.
Exchange, lease, management of county tax title lands: Chapter 36.35 RCW.
Tax title land
conveyance of to port districts: RCW 53.25.050.
may be deeded to department of natural resources for reforestation purposes: RCW 76.12.020.
may be leased for mineral, gas and petroleum development: Chapter 78.16 RCW.

84.64.300 Form of deed and reservation. The county treasurer shall upon payment to him of the purchase price for said property and any interest due, make and execute under his hand and seal, and issue to the purchaser, a deed in the following form for any lots or parcels of real property sold under the provisions of RCW 84.64.270.

State of Washington }
County of ----- } ss.

This indenture, made this ----- day of -----, 19--, between -----, as treasurer of ----- county, state of Washington, the party of the first part, and -----, party of the second part.

WITNESSETH, That whereas, at a public sale of real property, held on the ----- day of -----, A.D., 19--, pursuant to an order of the board of county commissioners of the county of -----, state of

Washington, duly made and entered, and after having first given due notice of the time and place and terms of said sale, and, whereas, in pursuance of said order of the said board of county commissioners, and of the laws of the state of Washington, and for and in consideration of the sum of ----- dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to ----- the following described real property, and which said real property is the property of ----- county, and which is particularly described as follows, to wit: -----, the said ----- being the highest and best bidder at said sale, and the said sum being the highest and best sum bid at said sale;

NOW, THEREFORE, Know ye that I, -----, county treasurer of said county of -----, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto -----, heirs and assigns, forever, the said real property hereinbefore described, as fully and completely as said party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this ---- day of -----, A.D. 19---

County Treasurer,
By -----
Deputy:

Provided, That when by order of the board of county commissioners any of the minerals or other resources enumerated in RCW 84.64.270 are reserved, the deed or contract of purchase shall contain the following reservation:

The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber and fossils of every name, kind or description, and which may be in or upon said lands above described; or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right to enter by itself, its agents, attorneys and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by it or its agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on said lands or any part thereof, for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly

reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to and over, said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved. No rights shall be exercised under the foregoing reservation, by the county, its successors or assigns, until provision has been made by the county, its successors or assigns, to pay to the owner of the land upon which the rights herein reserved to the county, its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: *Provided*, That if said owner from any cause whatever refuses or neglects to settle said damages, then the county, its successors or assigns, or any applicant for a lease or contract from the county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which said owner of said land may suffer: *Provided*, The county treasurer shall cross out of such reservation any of said minerals or other resources which were not reserved by order of the said board. [1961 c 15 § 84.64.300. Prior: 1945 c 172 § 2; 1927 c 263 § 2; 1925 ex.s. c 130 § 134; Rem. Supp. 1945 § 11295; prior: 1903 c 59 § 5; 1890 p 577 § 119; Code 1881 § 2938.]

84.64.310 Rental of tax-title property on month to month tenancy authorized. The board of county commissioners of any county may, pending sale of any county property acquired by foreclosure of delinquent taxes, rent any portion thereof on a tenancy from month to month. From the proceeds of the rentals the board of county commissioners shall first pay all expense in management of said property and in repairing, maintaining and insuring the improvements thereon, and the balance of said proceeds shall be paid to the various taxing units interested in the taxes levied against said property in the same proportion as the current tax levies of the taxing units having levies against said property. [1961 c 15 § 84.64.310. Prior: 1945 c 170 § 1; Rem. Supp. 1945 § 11298-1.]

84.64.320 Tax-title property may be disposed of without bids in certain cases. The board of county commissioners may dispose of tax foreclosed property to any governmental agency for public purposes by private negotiation, without a call for bids, for not less than the principal amount of the unpaid taxes. [1961 c 15 § 84.64.320. Prior: 1947 c 238 § 1; Rem. Supp. 1947 § 11295-1.]

84.64.330 Quieting title to tax-title property. In any and all instances in this state in which a treasurer's deed to real property has been or shall be issued to the county in proceedings to foreclose the lien of general taxes, and for any reason a defect in title exists or adverse claims against the same have not been legally determined, the

county or its successors in interest or assigns shall have authority to institute an action in the superior court in said county to correct such defects, and to determine such adverse claims and the priority thereof as in RCW 84.64.330 through 84.64.440 provided. [1961 c 15 § 84.64.330. Prior: 1931 c 83 § 1; 1925 ex.s. c 171 § 1; RRS § 11308-1.]

84.64.340 Quieting title to tax-title property—Form of action—Pleadings. The county or its successors in interest or assigns shall have authority to include in one action any and all tracts of land in which plaintiff or plaintiffs in such action, jointly or severally, has or claims to have an interest. Such action shall be one in rem as against every right and interest in and claim against any and every part of the real property involved, except so much thereof as may be at the time the summons and notice is filed with the clerk of the superior court in the actual, open and notorious possession of any person or corporation, and then except only as to the interest claimed by such person so in possession: *Provided*, That the possession required under the provisions of RCW 84.64.330 through 84.64.440 shall be construed to be that by personal occupancy only, and not merely by representation or in contemplation of law. No person, firm or corporation claiming an interest in or to such lands need be specifically named in the summons and notice, except as in RCW 84.64.330 through 84.64.440 provided, and no pleadings other than the summons and notice and the written statements of those claiming a right, title and interest in and to the property involved shall be required. [1961 c 15 § 84.64.340. Prior: 1931 c 83 § 2; 1925 ex.s. c 171 § 2; RRS § 11308-2.]

84.64.350 Quieting title to tax-title property—Summons and notice. Upon filing a copy of the summons and notice in the office of the county clerk, service thereof as against every interest in and claim against any and every part of the property described in such summons and notice, and every person or corporation, except one who is in the actual, open and notorious possession of any of said properties, shall be had by publication in the official county newspaper for six consecutive weeks; and no affidavit for publication of such summons and notice shall be required. In case there are outstanding local improvement assessments against any of the real property described in the summons and notice, a copy of the same shall be served on the treasurer of the city or town within which such real property is situated within five days after such summons and notice is filed.

The summons and notice in such action shall contain the title of the court; specify in general terms the years for which the taxes were levied and the amount of the taxes and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the tax record owner thereof during the years in which the taxes for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have the title of existing liens and

claims of every nature against said described real property, except that of the county, forever barred.

Said summons and notice shall also summon all persons, firms and corporations claiming any right, title and interest in and to said described real property to appear within sixty days after the date of the first publication, specifying the day and year, and state in writing what right, title and interest they have or claim to have in and to the property described, and file the same with the clerk of the court above named; and shall notify them that in case of their failure so to do, judgment will be rendered determining that the title to said real property is in the county free from all existing adverse interests, rights or claims whatsoever: *Provided*, That in case any of the lands involved is in the actual, open and notorious possession of anyone at the time the summons and notice is filed, as herein provided, a copy of the same modified as herein specified shall be served personally upon such person in the same manner as summons is served in civil actions generally. Said summons shall be substantially in the form above outlined, except that in lieu of the statement relative to the date and day of publication it shall require the person served to appear within twenty days after the day of service, exclusive of the date of service, and that the day of service need not be specified therein, and except further that the recitals regarding the amount of the taxes and costs and the years the same were levied, the legal description of the land and the tax record owner thereof may be omitted except as to the land occupied by the persons served.

Every summons and notice provided for in RCW 84.64.330 through 84.64.440 shall be subscribed by the prosecuting attorney of the county, or by any successor or assign of the county or his attorney, as the case may be, followed by his post office address. [1961 c 15 § 84.64.350. Prior: 1931 c 83 § 3; 1925 ex.s. c 171 § 3; RRS § 11308-3.]

84.64.360 Quieting title to tax-title property—Redemption before judgment. Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the county, and his or its successor in interest, shall have the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer the amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum, and by paying for the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which shall have been levied against such property and by paying such proportional part of the costs of the tax foreclosure proceedings and of the action herein authorized as the county treasurer shall determine.

Upon redemption of any property before judgment as herein provided, the county treasurer shall issue to the

redemptioner a certificate specifying the amount of the taxes, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, special assessments, penalty, interest and costs specified have been fully paid, and the lien thereof discharged. Such certificate shall clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax foreclosure proceedings. [1961 c 15 § 84.64.360. Prior: 1925 ex.s. c 171 § 4; RRS § 11308-4.]

84.64.370 Quieting title to tax-title property— Judgment. At any time after the return day named in the summons and notice the plaintiff in the cause shall be entitled to apply for judgment. In case any person has appeared in such action and claimed any interest in the real property involved adverse to that of the county or its successors in interest, such person shall be given a three days' notice of the time when application for judgment shall be made. The court shall hear and determine the matter in a summary manner similar to that provided in RCW 84.64.080, relating to judgment and order of sale in general tax foreclosure proceedings, and shall pronounce and enter judgment according to the rights of the parties and persons concerned in the action. No order of sale shall be made nor shall any sale on execution be necessary to determine the title of the county to the real property involved in such action. [1961 c 15 § 84.64.370. Prior: 1931 c 83 § 4; 1925 ex.s. c 171 § 5; RRS § 11308-5.]

84.64.380 Quieting title to tax-title property— Proof—Presumptions. The right of action of the county, its successors or assigns, under RCW 84.64.330 through 84.64.440 shall rest on the validity of the taxes involved, and the plaintiff shall be required to prove only the amount of the former judgment foreclosing the lien thereof, together with the costs of the foreclosure and sale of each tract of land for said taxes, and all the presumptions in favor of the tax foreclosure sale and issuance of treasurer's deed existing by law shall obtain in said action. [1961 c 15 § 84.64.380. Prior: 1931 c 83 § 5; 1925 ex.s. c 171 § 6; RRS § 11308-6.]

84.64.390 Quieting title to tax-title property— Appearance fee—Tender of taxes. Any person filing a statement in such action shall pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and shall be required to tender the amount of all taxes, interest and costs charged against the real property to which he lays claim, and no further costs in such action shall be required or recovered. [1961 c 15 § 84.64.390. Prior: 1925 ex.s. c 171 § 7; RRS § 11308-7.]

84.64.400 Quieting title to tax-title property— Appeal to supreme court or court of appeals. Any person aggrieved by the judgment rendered in such action shall have the right to appeal from the part of said judgment objectionable to him to the supreme court or the court of appeals of the state substantially in the manner and

within the time prescribed for appeals in RCW 84.64-.120. [1971 c 81 § 155; 1961 c 15 § 84.64.400. Prior: 1925 ex.s. c 171 § 8; 1925 ex.s. c 130 § 121; RRS § 11308-8; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106.]

84.64.410 Quieting title to tax-title property— Effect of judgment. The judgment rendered in such action, unless appealed from within the time prescribed herein and upon final judgment on appeal, shall be conclusive, without the right of redemption upon and against every person who may or could claim any lien or any right, title or interest in or to any of the properties involved in said action, including minors, insane persons, those convicted of crime, as well as those free from disability, and against those who may have at any time attempted to pay any tax on any of the properties, and against those in actual open and notorious possession of any of said properties.

Such judgment shall be conclusive as to those who appeal therefrom, except as to the particular property to which such appellant laid claim in the action and concerning which he appealed, and shall be conclusive as to those in possession of any property and who were not served except as to the property which such person is in the actual, open and notorious possession of, and in any case where it is asserted that the judgment was not conclusive because of such possession, the burden of showing such actual, open and notorious possession shall be on the one asserting such possession. [1961 c 15 § 84.64.410. Prior: 1925 ex.s. c 171 § 9; RRS § 11308-9.]

84.64.420 Quieting title to tax-title property— Special assessments payable out of surplus. Nothing in RCW 84.64.330 through 84.64.440 contained shall be construed to deprive any city or town, local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, interest and costs involved. [1961 c 15 § 84.64.420. Prior: 1925 ex.s. c 171 § 10; RRS § 11308-10.]

84.64.430 Quieting title to tax-title property— Form of deed on sale after title quieted. That in all cases where any county of the state of Washington has perfected title to real estate owned by such county, under the provisions of RCW 84.64.330 through 84.64.420 and resells the same or part thereof, it shall give to the purchaser a warranty deed in substantially the following form:

STATE OF WASHINGTON }
County of ----- } ss.

This indenture, made this ----- day of ----- 19--, between ----- as treasurer of ----- county, state of Washington, the party of the first part, and -----, party of the second part.

WITNESSETH, THAT WHEREAS, at a public sale of real property, held on the ----- day of ----- A.D. 19--, pursuant to an order of the board of county commissioners of the county of -----, state of

Washington, duly made and entered, and after having first given due notice of the time and place and terms of said sale, and, whereas, in pursuance of said order of the said board of county commissioners, and of the laws of the state of Washington, and for and in consideration of the sum of ----- dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to ----- the following described real property, and which said real property is the property of ----- county, and which is particularly described as follows, to wit:

-----, the said ----- being the highest and best bidder at said sale, and the said sum being the highest and best sum bid at said sale:

NOW THEREFORE KNOW YE that I, ----- county treasurer of said county of -----, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant, convey and warrant on behalf of ----- county unto -----, his heirs and assigns, forever, the said real property hereinbefore described.

Given under my hand and seal of office this ----- day of ----- A.D., 19---

County Treasurer.
By -----
Deputy.

[1961 c 15 § 84.64.430. Prior: 1929 c 197 § 1; RRS § 11308-11.]

84.64.440 Quieting title to tax-title property—Limitation on recovery for breach of warranty. No recovery for breach of warranty shall be had, against the county executing a deed under the provisions of RCW 84.64.430, in excess of the purchase price of the land described in such deed, with interest at the legal rate. [1961 c 15 § 84.64.440. Prior: 1929 c 197 § 2; RRS § 11308-12.]

84.64.450 Tax deeds to cities and towns absolute despite reversionary provision. All sales of tax-title lands heretofore consummated by any county, to a city or town, for municipal purposes, or public use, shall be absolute and final, and transfer title in fee, notwithstanding any reversionary provision in the tax deed to the contrary; and all tax-title deeds containing any such reversionary provision shall upon application of grantee in interest, be revised to conform with the provisions herein. [1961 c 15 § 84.64.450. Prior: 1947 c 269 § 1; Rem. Supp. 1947 § 11295-2.]

84.64.460 Easements. The general property tax assessed on any tract, lot, or parcel of real property includes all easements appurtenant thereto, provided said easements are a matter of public record in the auditor's office of the county in which said real property is situated. Any foreclosure of delinquent taxes on any tract, lot or parcel of real property subject to such easement or easements, and any tax deed issued pursuant thereto

shall be subject to such easement or easements, provided such easement or easements were established of record prior to the year for which the tax was foreclosed. [1961 c 15 § 84.64.460. Prior: 1959 c 129 § 1.]

Chapter 84.68

RECOVERY OF TAXES PAID OR PROPERTY SOLD FOR TAXES

Sections	
84.68.010	Injunctions prohibited—Exceptions.
84.68.020	Payment under protest—Claim not required.
84.68.030	Judgment—Payment—County tax refund fund.
84.68.040	Levy for tax refund fund.
84.68.050	Venue of action—Intercounty property.
84.68.060	Limitation of actions.
84.68.070	Remedy exclusive—Exception.
84.68.080	Action to recover property sold for taxes—Tender is condition precedent.
84.68.090	Action to recover property sold for taxes—Complaint.
84.68.100	Action to recover property sold for taxes—Restrictions construed as additional.
84.68.110	Small claims recoveries—Recovery of erroneous taxes without court action.
84.68.120	Small claims recoveries—Petition—Procedure of county officers—Transmittal of findings to department of revenue.
84.68.130	Small claims recoveries—Procedure of department of revenue.
84.68.140	Small claims recoveries—Payment of refunds—Procedure.
84.68.150	Small claims recoveries—Limitation as to time and amount of refund.

84.68.010 Injunctions prohibited—Exceptions. Injunctions and restraining orders shall not be issued or granted to restrain the collection of any tax or any part thereof, or the sale of any property for the nonpayment of any tax or part thereof, except in the following cases:

- (1) Where the law under which the tax is imposed is void;
- (2) Where the property upon which the tax is imposed is exempt from taxation; or
- (3) Where the sale is a result of an error made by an officer or employee of the county, and the board of county commissioners or other legislative authority of the county has issued an order pursuant to the provisions of RCW 84.64.145. [1972 ex.s. c 84 § 3; 1961 c 15 § 84.68.010. Prior: 1931 c 62 § 1; RRS § 11315-1.]

84.68.020 Payment under protest—Claim not required. In all cases of the levy of taxes for public revenue which are deemed unlawful or excessive by the person, firm or corporation whose property is taxed, or from whom such tax is demanded or enforced, such person, firm or corporation may pay such tax or any part thereof deemed unlawful, under written protest setting forth all of the grounds upon which such tax is claimed to be unlawful or excessive; and thereupon the person, firm or corporation so paying, or his or its legal representatives or assigns, may bring an action in the superior court or in any federal court of competent jurisdiction against the state, county or municipality by whose officers the same was collected, to recover such tax, or any portion thereof, so paid under protest: *Provided*, That

RCW 84.68.010 through 84.68.070 shall not be deemed to enlarge the grounds upon which taxes may now be recovered: *And provided further*, That no claim need be presented to the state or county or municipality, or any of their respective officers, for the return of such protested tax as a condition precedent to the institution of such action. [1961 c 15 § 84.68.020. Prior: 1937 c 11 § 1; 1931 c 62 § 2; 1927 c 280 § 7; 1925 c 18 § 7; RRS § 11315-2.]

84.68.030 Judgment—Payment—County tax refund fund. In case it be determined in such action that said tax, or any portion thereof, so paid under protest, was unlawfully collected, judgment for recovery thereof and lawful interest thereon from date of payment, together with costs of suit, shall be entered in favor of plaintiff. In case the action is against a county and the judgment shall become final, the amount of such judgment, including legal interest and costs where allowed, shall be paid out of the treasury of such county by the county treasurer upon warrants drawn by the county auditor against a fund in said treasury hereby created to be known and designated as the county tax refund fund. Such warrants shall be so issued upon the filing with the county auditor and the county treasurer of duly authenticated copies of such judgment, and shall be paid by the county treasurer out of any moneys on hand in said fund. If no funds are available in such county tax refund fund for the payment of such warrants, then such warrants shall bear interest in such cases and shall be callable under such conditions as are provided by law for county warrants, and such interest, if any, shall also be paid out of said fund. [1961 c 15 § 84.68.030. Prior: 1931 c 62 § 3; RRS § 11315-3.]

84.68.040 Levy for tax refund fund. Annually, at the time required by law for the levying of taxes for county purposes, the proper county officers required by law to make and enter such tax levies shall make and enter a tax levy or levies for said county tax refund fund, which said levy or levies shall be given precedence over all other tax levies for county and/or taxing district purposes, as follows:

(1) A levy upon all of the taxable property within the county for the amount of all taxes collected by the county for county and/or state purposes held illegal and recoverable by such judgments rendered against the county within the preceding twelve months, including legal interest and a proper share of the costs, where allowed, together with the additional amounts hereinafter provided for;

(2) A levy upon all of the taxable property of each taxing district within the county for the amount of all taxes collected by the county for the purposes of such taxing district, and which have been held illegal and recoverable by such judgments rendered against the county within the preceding twelve months, including legal interest and a proper share of the costs, where allowed.

The aforesaid levy or levies shall also include a proper share of the interest paid out of the county tax refund

fund during said twelve months upon warrants issued against said fund in payment of such judgments, legal interests and costs, plus such an additional amount as such levying officers shall deem necessary to meet the obligations of said fund, taking into consideration the probable portions of such taxes that will not be collected or collectible during the year in which they are due and payable, and also any unobligated cash on hand in said fund. [1961 c 15 § 84.68.040. Prior: 1937 c 11 § 2; 1931 c 62 § 4; RRS § 11315-4.]

84.68.050 Venue of action—Intercounty property. The action for the recovery of taxes so paid under protest shall be brought in the superior court of the county wherein the tax was collected or in any federal court of competent jurisdiction: *Provided*, That where the property against which the tax is levied consists of the operating property of a railroad company, telegraph company or other public service company whose operating property is located in more than one county and is assessed as a unit by any state board or state officer or officers, the complaining taxpayer may institute such action in the superior court of any one of the counties in which such tax is payable, or in any federal court of competent jurisdiction, and may join as parties defendant in said action all of the counties to which the tax or taxes levied upon such operating property were paid or are payable, and may recover in one action from each of the county defendants the amount of the tax, or any portion thereof, so paid under protest, and adjudged to have been unlawfully collected, together with legal interest thereon from date of payment, and costs of suit. [1961 c 15 § 84.68.050. Prior: 1937 c 11 § 3; 1931 c 62 § 5; RRS § 11315-5.]

84.68.060 Limitation of actions. No action instituted pursuant to this chapter or otherwise to recover any tax levied or assessed shall be commenced after the 30th day of the next succeeding June following the year in which said tax became payable. [1961 c 15 § 84.68.060. Prior: 1939 c 206 § 48; 1931 c 62 § 6; RRS § 11315-6.]

Limitation of action to cancel tax deed: RCW 4.16.090.

84.68.070 Remedy exclusive—Exception. Except as permitted by RCW 84.68.010 through 84.68.070, no action shall ever be brought or defense interposed attacking the validity of any tax, or any portion of any tax: *Provided, however*, That this section shall not be construed as depriving the defendants in any tax foreclosure proceeding of any valid defense allowed by law to the tax sought to be foreclosed therein except defenses based upon alleged excessive valuations, levies or taxes. [1961 c 15 § 84.68.070. Prior: 1939 c 206 § 49; 1931 c 62 § 7; RRS § 11315-7.]

84.68.080 Action to recover property sold for taxes—Tender is condition precedent. Hereafter no action or proceeding shall be commenced or instituted in any court of this state for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall

first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be recovered. [1961 c 15 § 84.68.080. Prior: 1888 c 22 (p 43) § 1; RRS § 955.]

Limitation of action to cancel tax deed: RCW 4.16.090.

84.68.090 Action to recover property sold for taxes—Complaint. In all actions for the recovery of lands or other property sold for taxes, the complainant must state and set forth specially in his complaint the tax that is justly due, with penalties, interest and costs, that the taxes for that and previous years have been paid; and when the action is against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, his assignees or grantees have been fully paid or tendered, and payment refused. [1961 c 15 § 84.68.090. Prior: 1888 c 22 (p 44) § 2; RRS § 956.]

84.68.100 Action to recover property sold for taxes—Restrictions construed as additional. The provisions of RCW 84.68.080 and 84.68.090 shall be construed as imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes. [1961 c 15 § 84.68.100. Prior: 1888 c 22 (p 44) § 3; RRS § 957.]

84.68.110 Small claims recoveries—Recovery of erroneous taxes without court action. Whenever a taxpayer believes or has reason to believe that, through error in description, double assessments or manifest errors in assessment which do not involve a revaluation of the property, he has been erroneously assessed or that a tax has been incorrectly extended against him upon the tax rolls, and the tax based upon such erroneous assessment or incorrect extension has been paid, such taxpayer may initiate a proceeding for the cancellation or reduction of the assessment of his property and the tax based thereon or for correction of the error in extending the tax on the tax rolls, and for the refund of the claimed erroneous tax or excessive portion thereof, by filing a petition therefor with the county assessor of the county in which the property is or was located or taxed, which petition shall legally describe the property, show the assessed valuation and tax placed against the property for the year or years in question and the taxpayer's reasons for believing that there was an error in the assessment within the meaning of RCW 84.68.110 through 84.68.150, or in extending the tax upon the tax rolls and set forth the sum to which the taxpayer desires to have the assessment reduced or the extended tax corrected. [1961 c 15 § 84.68.110. Prior: 1939 c 16 § 1; RRS § 11241-1.]

84.68.120 Small claims recoveries—Petition—Procedure of county officers—Transmittal of findings to department of revenue. Upon the filing of the petition with the county assessor that officer shall proceed forthwith to conduct such investigation as may be necessary

to ascertain and determine whether or not the assessment in question was erroneous or whether or not the tax was incorrectly extended upon the tax rolls and if he finds there is probable cause to believe that the property was erroneously assessed, and that such erroneous assessment was due to an error in description, double assessment or manifest error in assessment which does not involve a revaluation of the property, or that the tax was incorrectly extended upon the tax rolls, he shall endorse his findings upon the petition, and thereupon within ten days after the filing of the petition by the taxpayer forward the same to the county treasurer. If the assessor's findings be in favor of cancellation or reduction or correction he shall include therein a statement of the amount to which he recommends that the assessment and tax be reduced. It shall be the duty of the county treasurer, upon whom a petition with endorsed findings is served, as in RCW 84.68.110 through 84.68.150 provided, to endorse thereon a statement whether or not the tax against which complaint is made has in fact been paid and, if paid, the amount thereof, whereupon the county treasurer shall immediately transmit the petition to the prosecuting attorney and the prosecuting attorney shall make such investigation as he deems necessary and, within ten days after receipt of the petition and findings by him, transmit the same to the state department of revenue with his recommendation in respect to the granting or denial of the petition. [1975 1st ex.s. c 278 § 208; 1961 c 15 § 84.68.120. Prior: 1939 c 16 § 2; RRS § 11241-2.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.68.130 Small claims recoveries—Procedure of department of revenue. Upon receipt of the petition, findings and recommendations the state department of revenue shall proceed to consider the same, and it may require evidence to be submitted and make such investigation as it deems necessary and for such purpose the department of revenue shall be empowered to subpoena witnesses in order that all material and relevant facts may be ascertained. Upon the conclusion of its consideration of the petition and within thirty days after receipt thereof, the department of revenue shall enter an order either granting or denying the petition and if the petition be granted the department of revenue may order the assessment canceled or reduced or the extended tax corrected upon the tax rolls in any amount it deems proper but in no event to exceed the amount of reduction or correction recommended by the county assessor. [1975 1st ex.s. c 278 § 209; 1961 c 15 § 84.68.130. Prior: 1939 c 16 § 3; RRS § 11241-3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.68.140 Small claims recoveries—Payment of refunds—Procedure. Certified copies of the order of the department of revenue shall be forwarded to the county assessor, the county auditor and the taxpayer, and the taxpayer shall immediately be entitled to a refund of the difference, if any, between the tax already

paid and the canceled or reduced or corrected tax based upon the order of the department of revenue with legal interest on such amount from the date of payment of the original tax. Upon receipt of the order of the department of revenue the county auditor shall draw a warrant against the county tax refund fund in the amount of any tax reduction so ordered, plus legal interest to the date such warrant is issued, and such warrant shall be paid by the county treasurer out of any moneys on hand in said fund. If no funds are available in the county tax refund fund for the payment of such warrant the warrant shall bear interest and shall be callable under such conditions as are provided by law for county warrants and such interest, if any, shall also be paid out of said fund. The order of the department of revenue shall for all purposes be considered as a judgment against the county tax refund fund and the obligation thereof shall be discharged in the same manner as provided by law for the discharge of judgments against the county for excessive taxes under the provisions of RCW 84.68.010 through 84.68.070 or any act amendatory thereof. [1975 1st ex.s. c 278 § 210; 1961 c 15 § 84.68.140. Prior: 1939 c 16 § 4; RRS § 11241-4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.68.150 Small claims recoveries—Limitation as to time and amount of refund. No petition for cancellation or reduction of assessment or correction of tax rolls and the refund of taxes based thereon under RCW 84.68.110 through 84.68.150 shall be considered unless filed within three years after the year in which the tax became payable or purported to become payable. The maximum refund under the authority of RCW 84.68.110 through 84.68.150 for each year involved in the taxpayer's petition shall be two hundred dollars. Should the amount of excess tax for any such year be in excess of two hundred dollars, a refund of two hundred dollars shall be allowed under RCW 84.68.110 through 84.68.150, without prejudice to the right of the taxpayer to proceed as may be otherwise provided by law to recover the balance of the excess tax paid by him. [1961 c 15 § 84.68.150. Prior: 1949 c 158 § 1; 1941 c 154 § 1; 1939 c 16 § 5; Rem. Supp. 1949 § 11241-5.]

Chapter 84.69 REFUNDS

Sections	
84.69.010	Definitions.
84.69.020	Grounds for refunds.
84.69.030	Procedure to obtain order for refund.
84.69.040	Refunds may include amounts paid to state, and county and taxing district taxes.
84.69.050	Refund with respect to amounts paid state.
84.69.060	Refunds with respect to county and state taxes.
84.69.070	Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders.
84.69.080	Refunds with respect to taxing districts—Not to be paid from county funds.
84.69.090	To whom refund may be paid.

84.69.100	Refunds shall include interest—Written protests not required—Rate of interest.
84.69.110	Expiration date of refund orders.
84.69.120	Action on rejected claim—Time for commencement.
84.69.130	Claim prerequisite to action—Recovery limited to ground asserted.
84.69.140	Interest shall be allowed on amount recovered—Exception.
84.69.150	Refunds within sixty days.
84.69.160	Chapter does not supersede existing law.
84.69.170	Payment under protest not required.

84.69.010 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "Taxing district" means any county, city, town, township, port district, school district, road district, metropolitan park district, water district, or other municipal corporation now or hereafter authorized by law to impose burdens upon property within the district in proportion to the value thereof, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed, for such purposes, upon property in proportion to the benefits accruing thereto.

(2) "Tax" includes penalties and interest. [1961 c 15 § 84.69.010. Prior: 1957 c 120 § 1.]

84.69.020 Grounds for refunds. On order of the board of county commissioners or other county legislative authority of any county, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once; or
- (2) Paid as a result of manifest error in description; or
- (3) Paid as a result of a clerical error in extending the tax rolls; or
- (4) Paid as a result of other clerical errors in listing property; or
- (5) Paid with respect to improvements which did not exist on assessment date; or
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional; or
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended; or

(8) Paid or overpaid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same or paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same with respect to real property in which the person paying the same has no legal interest; or

(9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board; or

(10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: *Provided*, That the amount refunded under subsections (9) and (10) shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order; or

(11) Paid as a state property tax levied upon county assessed property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: *Provided, however,* That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 (Amendment 59) of the state Constitution equal one percent of the assessed value established by the board; or

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: *Provided,* That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12). [1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s. c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020. Prior: 1957 c 120 § 2.]

Applicability—1981 c 228: "Section 1(12) of the [this] amendatory act applies to only those taxes which first become due and payable subsequent to January 1, 1981: *Provided, however,* That this section shall not apply to any taxes which were paid under protest and which were timely paid." [1981 c 228 § 4.] This applies to RCW 84.69.020(12).

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Purpose—1974 ex.s. c 122: "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

Severability—Savings—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.69.030 Procedure to obtain order for refund. Except in cases wherein the board of county commissioners acts upon its own motion, no orders for a refund under this chapter shall be made except on a claim:

(1) Verified by the person who paid the tax, his guardian, executor or administrator; and

(2) Filed within three years after making of the payment sought to be refunded; and

(3) Stating the statutory ground upon which the refund is claimed. [1961 c 15 § 84.69.030. Prior: 1957 c 120 § 3.]

84.69.040 Refunds may include amounts paid to state, and county and taxing district taxes. Refunds ordered by the board of county commissioners may include:

(1) A portion of amounts paid to the state treasurer by the county treasurer as money belonging to the state; and also

(2) County taxes and taxes collected by county officers for taxing districts. [1961 c 15 § 84.69.040. Prior: 1957 c 120 § 4.]

84.69.050 Refund with respect to amounts paid state. The part of the refund representing amounts paid to the state shall be paid from the county general fund and the state auditor shall, upon the next succeeding settlement with the county, certify this amount refunded to the county: *Provided,* That when a state-wide refund of tax funds pursuant to state levies is required, the state auditor and department of revenue shall authorize adjustment procedures whereby counties may deduct from property tax remittances to the state the amount required to cover the state's portion of the refunds. [1973 2nd ex.s. c 5 § 1; 1961 c 15 § 84.69.050. Prior: 1957 c 120 § 5.]

84.69.060 Refunds with respect to county and state taxes. Refunds ordered under this chapter with respect to county and state taxes shall be paid by checks drawn upon the appropriate fund by the county treasurer: *Provided,* That in making refunds on a county or district wide basis, the county treasurer may make an adjustment on the next property tax payment due for the amount of the refund unless the taxpayer requests immediate refund. [1973 2nd ex.s. c 5 § 2; 1961 c 15 § 84.69.060. Prior: 1957 c 120 § 6.]

84.69.070 Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders. Refunds ordered with respect to taxing districts shall be paid by checks drawn by the county treasurer upon such available funds, if any, as the taxing districts may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such taxing district and on deposit in the county treasury. When such refunds are made as a result of taxes paid under levies or statutes adjudicated to be illegal or unconstitutional all administrative costs including interest paid on the refunds incurred by the county treasurer in making such refunds shall be a charge against the funds of such districts and/or the state on a pro rata basis until the county current expense fund is fully reimbursed for the administrative expenses incurred in making such refund: *Provided,* That whenever orders for refunds of ad valorem taxes promulgated by boards of county commissioners and unpaid checks shall expire and become void as provided in RCW 84.69.110, then any moneys remaining in a refund account established by the county treasurer for any taxing district may be transferred by the county treasurer from such refund account to the county current expense fund to reimburse the county for the administrative expense incurred in making refunds as prescribed herein. Any excess then remaining in the taxing district refund account may then

be transferred by the county treasurer to the current expense fund of the taxing district for which the tax was originally levied and collected. [1973 2nd ex.s. c 5 § 3; 1963 c 114 § 1; 1961 c 270 § 2; 1961 c 15 § 84.69.070. Prior: 1957 c 120 § 7.]

84.69.080 Refunds with respect to taxing districts—Not to be paid from county funds. Neither any county nor its officers shall refund amounts on behalf of a taxing district from county funds. [1961 c 15 § 84.69.080. Prior: 1957 c 120 § 8.]

84.69.090 To whom refund may be paid. The payment of refunds shall be made payable, at the election of the appropriate treasurer, to the taxpayer, his guardian, executor, or administrator or the owner of record of the property taxed, his guardian, executor, or administrator. [1961 c 15 § 84.69.090. Prior: 1957 c 120 § 9.]

84.69.100 Refunds shall include interest—Written protests not required—Rate of interest. Refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 shall include interest from the date of collection of the portion refundable or from the date of claim for refund, whichever is later: *Provided*, That refunds on a state, county, or district wide basis shall not commence to accrue interest until six months following the date of the final order of the court. No written protest by individual taxpayers need to be filed to receive a refund on a state, county, or district wide basis. The rate of interest shall be the equivalent coupon issue yield (as published by the Federal Reserve Bank of San Francisco) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid or the claim for refund is filed, whichever is later. The department of revenue shall adopt this rate of interest by rule. [1987 c 319 § 1; 1973 2nd ex.s. c 5 § 4; 1961 c 15 § 84.69.100. Prior: 1957 c 120 § 10.]

84.69.110 Expiration date of refund orders. Every order for refund of ad valorem taxes promulgated by the board of county commissioners under authority of this chapter as hereafter amended shall expire and be void three years from the date of the order and all unpaid checks shall become void. [1961 c 15 § 84.69.110. Prior: 1957 c 120 § 11.]

84.69.120 Action on rejected claim—Time for commencement. If the board of county commissioners rejects a claim or fails to act within six months from the date of filing of a claim for refund in whole or in part, the person who paid the taxes, his guardian, executor, or administrator may within one year after the date of the filing of the claim commence an action in the superior court against the county to recover the taxes which the board of county commissioners have refused to refund. [1981 c 228 § 2; 1961 c 15 § 84.69.120. Prior: 1957 c 120 § 12.]

84.69.130 Claim prerequisite to action—Recovery limited to ground asserted. No action shall be commenced or maintained under this chapter unless a claim for refund shall have been filed in compliance with the provisions of this chapter, and no recovery of taxes shall be allowed in any such action upon a ground not asserted in the claim for refund. [1961 c 15 § 84.69.130. Prior: 1957 c 120 § 13.]

84.69.140 Interest shall be allowed on amount recovered—Exception. In any action in which recovery of taxes is allowed by the court, the plaintiff is entitled to interest on the taxes for which recovery is allowed at a rate of five percent per annum from the date of collection of the tax to the date of entry of judgment, and such accrued interest shall be included in the judgment. This section shall not apply to taxes paid before June 12, 1957. [1961 c 15 § 84.69.140. Prior: 1957 c 120 § 14.]

84.69.150 Refunds within sixty days. Notwithstanding any other laws to the contrary, any taxes paid before or after delinquency may be refunded, without interest, by the county treasurer within sixty days after the date of payment if:

- (1) Paid more than once; or
- (2) The amount paid exceeds the amount due on the property as shown on the roll. [1961 c 15 § 84.69.150. Prior: 1957 c 120 § 15.]

84.69.160 Chapter does not supersede existing law. This chapter is enacted as a concurrent refund procedure and shall not be construed to displace or supersede any portion of the existing laws relating to refunding procedures. [1961 c 15 § 84.69.160. Prior: 1957 c 120 § 16.]

84.69.170 Payment under protest not required. The remedies herein provided shall be available regardless of whether the taxes in question were paid under protest. [1961 c 15 § 84.69.170. Prior: 1957 c 120 § 17.]

Chapter 84.70

DESTROYED PROPERTY—ABATEMENT OR REFUND

Sections

84.70.010	Reduction in true cash value—Formula—Appeal.
84.70.040	Arson destroyed property.
84.70.050	Property destroyed after placement on tax rolls—Duties of county assessor.

84.70.010 Reduction in true cash value—Formula—Appeal. (1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster, the true cash value of such property shall be reduced for that year by an amount determined as follows:

(a) First take the true cash value of such taxable property before destruction or reduction in value and deduct therefrom the true cash value of the remaining property after destruction or reduction in value.

(b) Then divide any amount remaining by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after the date of the destruction or reduction in value of the property.

(2) No reduction in the true cash value shall be made more than three years after the date of destruction or reduction in value.

(3) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(4) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(5) The taxpayer may appeal the amount of reduction to the county board of equalization within thirty days of notification or July 15th of the year of reduction, whichever is later. The board shall reconvene, if necessary, to hear the appeal. [1987 c 319 § 6; 1981 c 274 § 1; 1975 1st ex.s. c 120 § 2; 1974 ex.s. c 196 § 3.]

Severability—1974 ex.s. c 196: See note following RCW 84.56.020.

Refund of property taxes: Chapter 84.69 RCW.

84.70.040 Arson destroyed property. No relief under this chapter shall be given to any person who is convicted of arson with regard to the property for which relief is sought. [1987 c 319 § 7; 1974 ex.s. c 196 § 6.]

Severability—1974 ex.s. c 196: See note following RCW 84.56.020.

84.70.050 Property destroyed after placement on tax rolls—Duties of county assessor. See RCW 36.21.080.

department of revenue of the receipt of any such payment. [1975 1st ex.s. c 278 § 211; 1961 c 15 § 84.72-.010. Prior: 1941 c 199 § 1; Rem. Supp. 1941 § 11337-15.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.72.020 Basis of apportionment. Any such moneys so paid to the state treasurer shall be apportioned to the state and to the taxing districts thereof that would be entitled to share in the property taxes in lieu of which such payments are made in the same proportion that the state and such taxing units would have shared in such property taxes if the same had been levied. The basis of apportionment shall be the same as that of property taxes first collectible in the year in which such lieu payment is made: *Provided*, That if any such lieu payment cannot be so apportioned the apportionment shall be made on such basis as the department of revenue shall deem equitable and proper. [1975 1st ex.s. c 278 § 212; 1961 c 15 § 84.72.020. Prior: 1941 c 199 § 2; Rem. Supp. 1941 § 11337-16.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

84.72.030 Certification of apportionment to state treasurer—Distribution to county treasurers. The department of revenue may indicate either the exact apportionment to taxing units or it may direct in general terms that county treasurers shall apportion any such lieu payment in the manner provided in RCW 84.72-.020. In either event the department of revenue shall certify to the state treasurer the basis of apportionment and the state treasurer shall thereupon forthwith transmit any such lieu payment, together with a statement of the basis of apportionment, to the county treasurer in accordance with such certification. [1975 1st ex.s. c 278 § 213; 1961 c 15 § 84.72.030. Prior: 1941 c 199 § 3; Rem. Supp. 1941 § 11337-17.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.72

FEDERAL PAYMENTS IN LIEU OF TAXES

Sections

84.72.010	State treasurer authorized to receive in lieu payments—Department of revenue to apportion.
84.72.020	Basis of apportionment.
84.72.030	Certification of apportionment to state treasurer—Distribution to county treasurers.

84.72.010 State treasurer authorized to receive in lieu payments—Department of revenue to apportion. The state treasurer is hereby authorized and directed to receive any moneys that may be paid to the state by the United States or any agency thereof in lieu of ad valorem property taxes, and to transfer the same to the respective county treasurers in compliance with apportionments made by the state department of revenue; and the state treasurer shall immediately notify the

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Chapter 84.98

CONSTRUCTION

Sections

84.98.010	Continuation of existing law.
84.98.020	Title, chapter, section headings not part of law.
84.98.030	Invalidity of part of title not to affect remainder.
84.98.040	Repeals and saving.
84.98.050	Emergency—1961 c 15.

84.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 15 § 84.98.010.]

84.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or

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subsection headings, as used in this title, do not constitute any part of the law. [1961 c 15 § 84.98.020.]

84.98.030 Invalidity of part of title not to affect remainder. If any section, subdivision of a section, paragraph, sentence, clause or word of this title for any reason shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of this title but shall be confined in its operation to the section, subdivision of a section, paragraph, sentence, clause or word directly involved in the controversy in which such judgment shall have been rendered. If any tax imposed under this title shall be adjudged invalid as to any person, corporation, association or class of persons, corporations or associations included within the scope of the general language of this title such invalidity shall not affect the liability of any person, corporation, association or class of persons, corporations or associations as to which such tax has not been adjudged invalid. It is hereby expressly declared that had any section, subdivision of a section, paragraph, sentence, clause, word or any person, corporation, association or class of persons, corporations or associations as to which this title is declared invalid been eliminated from the title at the time the same was considered the title would have nevertheless been enacted with such portions eliminated. [1961 c 15 § 84.98.030.]

84.98.040 Repeals and saving. See 1961 c 15 § 84.98.040.

84.98.050 Emergency—1961 c 15. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 15 § 84.98.050.]

Title 85

DIKING AND DRAINAGE

Chapters

- 85.05 Diking districts.**
- 85.06 Drainage districts and miscellaneous drainage provisions.**
- 85.07 Miscellaneous diking and drainage provisions.**
- 85.08 Diking, drainage, and sewerage improvement districts.**
- 85.12 Federal aid to diking, drainage, and sewerage improvement districts.**
- 85.15 Diking, drainage, sewerage improvement districts—Maintenance and expansion—1967 act.**
- 85.16 Maintenance costs and levies—Diking, drainage, and sewerage improvement districts.**
- 85.18 Levy for continuous benefits—Diking districts.**
- 85.20 Reorganization of districts into improvement districts—1917 act.**
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- 85.28 Private ditches and drains.**
- 85.32 Drainage district revenue act of 1961.**
- 85.36 Powers of special districts.**
- 85.38 Special district creation and operation.**

Adjustment of diking and drainage district indebtedness: Chapter 87-.64 RCW.

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Authority of cities and towns to contract for dikes, levees: RCW 35.21.090.

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Chapter 85.05

DIKING DISTRICTS

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- 85.05.065 Certain powers and rights governed by chapter 85.38 RCW.
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- 85.05.640 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Definitions.
- 85.05.650 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Ratification and confirmation of prior acts.

Reviser's note: The language "this act", "this chapter" and words of similar import appear throughout this chapter, chapter 85.05 RCW.

This chapter is almost entirely comprised of the basic diking district act of 1895 c 117 as amended and as expressly added thereto by subsequent enactments. The chapter is codified in the session law order of the basic act with a few independent sections which are in pari materia being also codified herein. Some sections were expressly added to the chapter of the code or compilation in which the basic act was currently published at the time of the particular enactment. Similarly some sections were amended by reference to the compilation number only. Some of these sections contain the language "this act", "this chapter", or both which appear in the session law either as original language or as reenactments of the compiler's translation. Therefore, throughout chapter 85.05 RCW such language is retained, wherever it appears, in the most recent session law reenactment. Situations concerning effective dates of particular acts or having express restrictive applications are otherwise specially noted.

Validation—1915 c 163: "Section 1. Whenever a petition for the formation of a diking district, under the provisions of section 4092 of Rem. & Bal. Code, shall have been filed with the board of county commissioners of any county, and such petition shall have conformed to the requirements of said section, except that the description of the proposed system of diking, the route over which the same is to be constructed, and the proposed spurs or branches, and the termini thereof, shall not have been definitely set forth in said petition, or said petition shall have been defective in any particular, and whenever said petition shall have been published, as required in section 4093 of Rem. & Bal. Code and a hearing shall have been held thereon, and supplemental petitions shall have been filed, and the board of county commissioners shall have, at the final hearing, entered findings and an order granting the prayer of the petitioners, in whole or in part, as provided in said section 4093, and said board of county commissioners shall have given notice of an election to be held in such proposed diking district, and shall have appointed officers of election in the manner prescribed in section 4094 of Rem. & Bal. Code, and such election shall have been held, and the board of county commissioners shall have counted and canvassed the votes cast thereat, and it shall have appeared that a majority of the votes cast were for "Dike Districts Yes," and the board shall have entered an order upon its records declaring the proposed territory duly organized as a diking district, and given such district a proper number, followed by the name of the county and state, and declared the three persons receiving respectively the highest number of votes the duly elected dike commissioners of such diking district, and caused a copy of the order entered of record, to be duly certified and filed in the office of the secretary of state, in the manner prescribed in section 4095 of Rem. & Bal. Code, the organization of said diking district so attempted to be organized shall be deemed complete, and the organization of any such diking district so attempted to be organized in the manner hereinabove set forth, is hereby validated, and said diking district is hereby declared to be a duly organized and established diking district." [1915 c 163 § 1.]

Special district creation and operation: Chapter-85.38 RCW.

85.05.010 Districts authorized—Powers—Management. Any portion of a county requiring diking may be organized into a diking district, and when so organized, such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as diking district No. ----- (here insert number) of the county of ----- (here insert the name of county) of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such diking district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and

employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [1921 c 146 § 1; 1895 c 117 § 1; RRS § 4236. Cf. 1888 p 90 § 1; Code 1881 § 2519. Formerly RCW 85.04.005, part.]

85.05.015 Voting rights. Each qualified voter of a diking or drainage improvement district who owns more than ten acres of land within the district shall be entitled to one additional vote for each ten acres or major fraction thereof located within the district, up to a maximum total of twenty votes for any voter, or in the case of community property, a maximum total of ten votes per member of the marital community: *Provided*, That this additional voting provision shall only apply in districts that were not in operation and did not have improvements as of May 14, 1925. [1985 c 396 § 21.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.065 Certain powers and rights governed by chapter 85.38 RCW. Diking districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 31.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.070 Eminent domain—Powers of district. All diking districts organized under the provisions of this act shall have the right of eminent domain with the power by and through its board of commissioners to cause to be condemned and appropriated private property for the use of said organization, in the construction and maintenance of a system of dikes and make just compensation therefor; that the property of private corporations may be subjected to the same rights of eminent domain as private individuals, and said board of commissioners shall have the power to acquire by purchase all of the real property necessary to make the improvements provided for by this act. All diking districts and the commissioners thereof now organized and existing, and all diking districts hereafter to be organized, and the commissioners thereof shall have in addition to the rights, powers and authority now conferred by any law of this state:

(1) The right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such diking district, or any rivers, watercourses or streams which shall at any time by their overflow damage the land within the boundaries of any such diking district.

(2) To construct all needed and auxiliary dikes, drains, ditches, canals, flumes, locks and all other necessary artificial appliances, wherever situated, in the construction of a diking system and which may be necessary or advisable to protect the land in any diking district from overflow, or to provide an efficient system of drainage for the land situated within such diking district, or to assist and become necessary in the preservation and maintenance of such diking system.

(3) In the accomplishment of the foregoing objects, the commissioners of such diking districts are hereby given, in addition to the right and power of eminent domain now conferred by law upon the commissioners of any diking district, the right, power and authority by purchase, or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary or needed rights of way in the straightening, deepening or widening of such rivers, watercourses or streams, and such auxiliary drains, ditches or canals hereinabove mentioned, and when so acquired shall have and are hereby given the right, power and authority, by and with the consent and approval of the United States government, in cases where such consent is necessary, to divert, alter or change the bed or course of any such river, watercourse or stream aforesaid, or to deepen or widen the same.

All diking districts and the commissioners thereof are further given the right, power and authority to join and contract with any other diking district or districts for the joint construction of any of the foregoing works, appliances, or improvements, whether such works, appliances or improvements are located within the boundaries of any or all of the contracting districts. [1939 c 117 § 1; 1915 c 153 § 1; 1907 c 95 § 1; 1895 c 117 § 7; RRS § 4243. Prior: 1883 p 30 § 1; Code 1881 § 2523. Formerly RCW 85.04.410.]

85.05.071 Resolution to construct drainage system. Before entering upon the construction of any system of drainage for the land situated within such diking district, the commissioners thereof shall adopt a resolution which shall contain a brief and general description of the proposed improvement, a statement that the costs thereof shall be paid by warrants drawn and payable in like manner as for the original construction of the dikes of such district, and fixing a time and place within such district for hearing objections to such proposed improvement or for the proposed method of paying the costs thereof. The time so fixed shall be not less than thirty days or more than sixty days from the date said resolution shall be adopted. Such resolution may be adopted by the commissioners upon their own motion and it shall be their duty to adopt such resolution at any time when a petition signed by the owners of sixty percent or more of the acreage within such diking district is presented, requesting them to do so. [1915 c 153 § 2; RRS § 4244. Formerly RCW 85.04.450.]

85.05.072 Resolution to construct drainage system—Notice of hearing. Notice of the hearing shall be given by posting in three public places within the district a true copy of the resolution signed by the commissioners of the diking district and attested with the seal thereof, which notice shall be posted for at least ten days prior to the day fixed in the resolution for the hearing. Notice shall also be published at least once in a newspaper of general circulation in the district at least ten days before the date of the hearing. [1985 c 469 § 67; 1915 c 153 § 3; RRS § 4245. Formerly RCW 85.04.455.]

85.05.073 Resolution to construct drainage system—Procedure in absence of objections. At the time fixed, the commissioners shall meet and if no objections have been made to the proposed improvement or to the proposed method of paying the costs thereof, they shall adopt an order reciting that fact and shall thereupon proceed to construct such system of drainage and pay the costs thereof in accordance with the terms specified in the resolution. [1915 c 153 § 4; RRS § 4246. Formerly RCW 85.04.460, part.]

85.05.074 Resolution to construct drainage system—Objections to improvement. But if objections in writing are filed either to the proposed improvement or to the proposed method of paying the costs thereof, the commissioners shall proceed to hear and consider the same and may, thereupon, order that such proposed improvement be abandoned for the time being or may direct such improvement to be constructed and the order of the commissioners in that regard shall be final and conclusive on all parties interested: *Provided, however,* That no such proceeding shall be abandoned unless the owners of at least twenty-five percent of the acreage within said district shall have at or prior to said hearing, filed protests against the same. But nothing contained in *this act shall be held to forbid the commissioners in their discretion overruling all protests and directing the construction of such improvement.

Commissioners shall likewise hear and consider all objections that may be filed to the proposed method of paying the cost of such improvement. [1915 c 153 § 5; RRS § 4247. Formerly RCW 85.04.460, part.]

***Reviser's note:** The language "this act" appears in 1915 c 153 codified as RCW 85.05.070 through 85.05.079. See also reviser's note following chapter digest.

85.05.075 Resolution to construct drainage system—Assessment of benefits. In case the commissioners at such hearing shall determine that the benefits accruing to any lot or parcel of lands within said district by reason of the construction of such drainage system are greater or less than the amount theretofore fixed in the original or any subsequent proceeding for the construction of dikes, they shall determine the amount of such benefits to each lot or parcel of land and certify their findings and determination in that regard to the county auditor and the county auditor shall note the same on the transcript of the judgment (and in case there has been any readjustment of assessments of such diking district, then upon such transcript as readjusted). [1915 c 153 § 6; RRS § 4248. Formerly RCW 85.04.465.]

85.05.076 Resolution to construct drainage system—Appeal to supreme court—Trial de novo. Any person deeming himself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in

the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do anything in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits. [1915 c 153 § 7; RRS § 4249. Formerly RCW 85.04.475, part.]

85.05.077 Resolution to construct drainage system—Assessments for drains and dikes to be segregated. In all cases wherein it is finally determined that the assessments for the system of drainage differ from the assessment theretofore made, as to any tract or parcel of land within said diking district, the diking commissioners in making their annual estimate shall segregate the amount necessary to be raised for the construction, repair and maintenance of the system of drainage or for the payment of the principal or interest of any bonds issued for drainage purposes from the amount necessary to be raised for all other diking purposes and the county auditor in apportioning said estimate for drainage purposes to the lands in such district shall base such apportionment upon the assessment fixed for drainage purposes and shall apportion the remainder of such estimate upon the basis fixed in the original or any subsequent proceeding for all other diking purposes. But in all other cases, the estimate and apportionment shall be made in accordance with existing laws. [1915 c 153 § 8; RRS § 4250. Formerly RCW 85.04.470.]

85.05.078 Resolution to construct drainage system—Bonds to construct drainage system. Authority is hereby given to any diking district heretofore organized, or that may be hereafter organized, to issue bonds of such diking district for the purpose of procuring funds with which to construct a drainage system, such bonds to be issued in accordance with the terms of RCW 85.05.480. [1915 c 153 § 9; RRS § 4251. Formerly RCW 85.04.480.]

85.05.079 Resolution to construct drainage system—Appeals to the supreme court or the court of appeals. Either the dike commissioners or any landowner who has appealed to the superior court in accordance with the provisions of *this act shall have a right to appeal to the supreme court or the court of appeals within the time and in the manner prescribed by existing law. [1971 c 81 § 156; 1915 c 153 § 10; RRS § 4252. Formerly RCW 85.04.475, part.]

***Reviser's note:** "This act", see note following RCW 85.05.074.

85.05.080 Rights of way on public land. The right, power and authority to acquire the necessary and needed

rights of way for any and all purposes now existing by law or created by this act, may be acquired by the commissioners of any diking district over, across and upon any land, or interest therein, of the state of Washington or any county of this state, and streets, avenues, alleys or public places of any city, town or municipal corporation of this state: *Provided, however,* That the construction of such dike or dikes shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such dike or dikes, sewers, water pipes, mains, or the granting of any franchise thereon, or the improvement by way of planking, replanking, paving, repaving or any other power, right or authority which but for this act such city or town would have in or to such street, avenue, alley or public place; except, however, that such right, power or authority on behalf of such city or town shall not be exercised either by such city or town or by any person, persons, firms or corporations to whom it might grant any right or franchise, which will materially impair the efficiency of such dike or dikes. The provisions of this section as regards said system of dikes to be located within the boundaries of any incorporated city or town shall apply to the extension or enlargement of any dike or dikes already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [1907 c 95 § 2; RRS § 4253. Formerly RCW 85.04.415.]

85.05.081 Organization—Matters to be set in notices, petitions or proceedings. In all proceedings hereafter had to organize diking districts, all notices, petitions or proceedings shall contain and set forth all matters and things required by existing law, and in addition thereto shall contain and set forth, so far as is necessary or applicable, all matters and things required by the provisions of this act, and all diking districts now existing, which may exercise any of the rights, powers or authority conferred by the provisions of this act, the proceedings to obtain the benefits hereof, must contain such allegations, and such steps and proceedings must be taken, as is rendered necessary by the provisions of this act; and the commissioners of existing diking districts are hereby given the right, power and authority to institute all proceedings and to take all necessary steps to secure the benefits of the provisions of this act, and all proceedings to secure the benefits thereof and all judgments to be rendered in such proceedings, including the filing of transcripts and the making of levies, and all other proceedings, shall be in addition to proceedings, assessments or levies, theretofore made in any prior proceedings. [1907 c 95 § 3; RRS § 4254.]

85.05.082 Beds and shores of streams granted to district. All the right, title and interest of the state of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any diking district up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including

the line of ordinary high water within the banks of all navigable rivers and lakes, to the extent that the same under any proceedings to be had under this act shall cease to become a part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given, granted and vested in the respective diking districts now existing or hereafter to be formed; and the commissioners of such respective diking districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notices and proceedings as govern, under existing laws of this state, the board of county commissioners in the sale and disposition of any real estate belonging to counties of this state. The proceeds of such sales are to be used for the benefits of such diking district in the payment of any expenses connected with the construction of such dikes or maintenance thereof: *Provided, however,* That the commissioners of such diking district may, in their discretion, exchange such abandoned beds and shores for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams; and which exchange may be made upon such terms, conditions and in such areas as in the discretion of such commissioners they may deem advisable and for the best interests of such diking district, without any notice or other formality of proceedings whatever. [1907 c 95 § 4; RRS § 4255. Formerly RCW 85.04.445.]

85.05.083 Auditor to sign petition for his county, when. Whenever the county owns any land situated within the boundaries of a proposed diking district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such diking district for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of a majority signature in acreage to the petition for the formation of such district. [1907 c 95 § 5; RRS § 4256. Formerly RCW 85.04.430.]

85.05.085 Commissioners, duty of. The board of dike commissioners shall consist of three elected commissioners. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW. The board of dike commissioners shall have the exclusive charge of the construction and maintenance of all dikes or dike systems which may be constructed within the district, and shall be the executive officers thereof, with full power to bind the district by their acts in the performance of their duties, as provided by law. [1985 c 396 § 37; 1921 c 146 § 5; 1895 c 117 § 8; RRS § 4257. Cf. 1883 p 31 § 2; Code 1881 § 2527. Formerly RCW 85.04.045, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.090 Petition for improvement—Contents. Whenever it is desired to prosecute the construction of a system of dikes within said district, said district, by and

through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route over which the same is to be constructed, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement, showing therein the names of the landowners whose lands are to be benefited by such proposed improvement; the number of acres owned by each landowner, and the maximum amount of benefits per acre to be derived by each landowner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the landowners through whose land the right-of-way is desired for the construction of said dikes; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right-of-way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of the benefits to be derived by such landowners by reason of the construction of said system. Such estimate shall be made, respectively, to each person through whose land said right-of-way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right-of-way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of dikes is necessary for the protection of all the lands from overflow described in said petition, and that all lands sought to be appropriated for said right-of-way are necessary to be used as a right-of-way in the construction and maintenance of said improvements; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by the construction of said dikes, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from such proposed improvement shall be estimated in said petition against said road or railroad. [1895 c 117 § 9; RRS § 4258. Formerly RCW 85.04.050, part.]

85.05.100 Petition for improvement—Employment of assistants—Compensation as costs in suits. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal assistance as may be necessary, with full

power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [1895 c 117 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

85.05.110 Summons—Contents—Service. A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed will be benefited by the improvement, and stating the court wherein the petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. The summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of the notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations service shall be made upon the president, secretary or other director or trustee of the corporation; in case of persons under eighteen years of age, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of the person; in case of idiots, lunatics or insane persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. *In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by the improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in the real or other property is a nonresident of this state, or where the residence of the owner or person is unknown, and an affidavit of one or more of the commissioners of the district shall be filed that owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper of general circulation in the county where such lands are situated once a week for three successive weeks. The publication shall be deemed service upon each nonresident person or persons whose residence is unknown. The summons may be served by any competent person eighteen years of age or over. Due proof of service of the summons by affidavit of the person serving

the same, or by the printer's affidavit of publication, shall be filed with the clerk of the court before the court shall proceed to hear the matter. Want of service of the notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for, service of notice, order and other papers in the proceeding authorized by this chapter may be made as the superior court, or the judge thereof, may direct: *Provided*, That personal service upon any party outside of this state shall be of like effect as service by publication. [1985 c 469 § 68; 1971 ex.s. c 292 § 56; 1895 c 117 § 11; RRS § 4260. Formerly RCW 85.04.060, part.]

***Reviser's note:** Subsequent legislation provides for service of summons on budget director (now director of financial management; chapter 43.41 RCW), see chapter 79.44 RCW; see also note following RCW 85.06.110.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

85.05.120 Appearance of defendants—Jury—Verdict—Decree. Any or all of said defendants may appear jointly or separately, and admit or deny the allegations of said petition, and plead any affirmative matter in defense thereof, at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable, and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits as herein provided, if in attendance upon his court; and if not, he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury in any case, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned, the cost thereof shall be taxed as part of the costs in the proceeding, and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the

district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find the maximum amount of benefits, per acre, to be derived by each of the landowners from the construction of said improvement. And upon a return of the verdict into court, the same shall be recorded as in other cases; whereupon a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said diking district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district. [1895 c 117 § 12; RRS § 4261. Formerly RCW 85.04.065, part.]

85.05.130 Assessment of benefited lands formerly omitted—Procedure—Appeals. If at any time it shall appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other

diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the

respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure, or improvement, and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law. [1971 c 81 § 157; 1913 c 89 § 1; 1901 c 111 § 1; 1895 c 117 § 13; RRS § 4262.]

Reviser's note: This section was declared unconstitutional in *Malim v. Benthien*, 114 Wash. 533 (1921). Prior enactments are set forth below:

1901 c 111 § 1. "If the board of diking commissioners shall, at any time, discover that any lands within said district are being benefited by the diking system and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in *the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits as provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the Superior Court in the original cause setting forth the fact of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the name of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs, and in its discretion, call a jury of not less than three jurors, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: *And provided further,* That in case the expense and costs of the improvement have been paid for by assessments levied against the lands assessed in the original proceeding before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits

provided in this act, may appeal to the Supreme Court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the Supreme Court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

***Reviser's note:** The language "the last preceding section" which appears in the foregoing quotation of 1901 c 111 § 1, refers to 1895 c 117 § 12 codified as RCW 85.05.120.

1895 c 117 § 13. "Every person or corporation feeling himself or itself aggrieved by the judgment for damages, or the assessment of benefits, may appeal to the supreme court of this state, within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

85.05.135 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which diking districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which diking districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 24.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.140 Proceedings may be dismissed when. In case the damages or amount of compensation for such right-of-way, together with the estimated cost of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [1895 c 117 § 14; RRS § 4263. Formerly RCW 85.04.070, part.]

85.05.150 Procedure to claim awards. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1895 c 117 § 15; RRS § 4264. Formerly RCW 85.04.210, part.]

85.05.160 Transcript of benefits to auditor—Assessments—Collection. Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption and the lands sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of lands for general taxes: *Provided*, That said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporations, according to said notice, upon the assessment rolls in his said office, and collected therewith: *And provided further*, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work. [1895 c 117 § 16; RRS § 4265. Formerly RCW 85.04.080, part.]

85.05.170 Tax to pay cost on dismissal. In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said diking commissioners shall levy a tax upon all of the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment, and the cost of levying said tax, and shall cause said tax roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer, as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same rate of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes.

[1895 c 117 § 17; RRS § 4266. Formerly RCW 85.04.075, part.]

85.05.180 Construction—Contractors—Performance bonds. After the filing of said certificate said commissioners of such diking district shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: *Provided*, That in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, shall perform the whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: *Provided further*, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district. [1895 c 117 § 18; RRS § 4267. Formerly RCW 85.04.095, part.]

85.05.190 Substantial changes in plans—Procedure. The work on said improvement shall begin without delay, and shall be carried on with all expedition possible, and said board of commissioners of said diking district, or any contractor thereunder, shall have no power whatever to change the location of the dikes or the system of improvement or the manner of doing the work

therein so as to make any radical changes in said improvement, without the written consent of all the landowners to be benefited thereby, and the landowners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said landowners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners [clerk] shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the landowners or others claiming any lien thereon or interest therein appearing of record in said district, and any or all of such parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of such proceedings that the property rights of any of said landowners will be affected by such proposed change in said improvement, then the court, after having passed upon all preliminary questions as in the original proceedings, shall cause a jury to be impaneled as in the case of the original proceedings for the establishment of said improvement, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations the same as upon the original petition, by reason of such proposed change, and the amount of compensation to be paid to any persons or corporations therefor, and for any additional right-of-way that may be necessary to be appropriated by reason of said proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said landowners by reason of such proposed change in said improvement, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages, and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings under the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvement according to the changes made therein. [1895 c 117 § 19; RRS § 4268. Formerly RCW 85.04.100, part.]

85.05.200 Payments on contracts—Retained percentage. During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: *Provided*, That no allowance or payment shall be made for said

work to any contractor or subcontractor to exceed seventy-five percent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five percent of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [1895 c 117 § 20; RRS § 4269. Formerly RCW 85.04.105, part.]

85.05.210 Private dikes, how connected—Additional plans—Costs. In case any diking district organized under the provisions of this act desires to connect its system of dikes with the system of dikes of any other district theretofore organized or constructed, said last mentioned diking district shall be made a party defendant in the proceedings in the superior court for the establishment of the improvement proposed to be constructed by such first mentioned diking district, and the petition to be filed in said court, in addition to the facts to be set forth therein as hereinbefore provided for, shall set forth the further fact that said district is desirous of connecting its said system of dikes with the system of such other diking district, and shall set forth an estimate of the additional cost per annum, if any, for the future maintenance of the diking system so sought to be connected with, and also an estimate of the cost of any additional improvement in said system so sought to be connected with, if any, by reason of such connection, and shall also set forth the amount of compensation which should be made by said diking district for the privilege of connecting with the said system of dikes; and in case it shall be deemed necessary to enlarge or strengthen the system of dikes to be connected with by reason of such connection, there shall be filed with said petition, in addition to the plans, specifications and data hereinbefore provided to be filed, plans and specifications and the estimated cost of the proposed improvement to be made in the system sought to be connected with by reason of such connection, and the proceedings thereon shall be the same as in other cases for the establishment of diking districts under the provisions of this act: *Provided*, That the jury shall, in addition to the other findings provided for in other cases under the provisions of this act, find the amount of compensation to be paid said district with whose system connection is sought to be made, for any additional cost, if any, which may be thrown upon said district by reason of the increased cost of maintenance by reason of such connection, and shall estimate the amount of such increased cost of maintenance per annum, and also the amount of compensation to be made to said district for the privilege of joining on to its system of dikes; the compensation to be made for the increased cost of maintenance shall be

paid per annum out of the revenue derived from the assessments to be levied as in other cases, and the compensation to be made as may be found by the jury to said district whose system is sought to be connected with for the privilege thereof, shall be paid such district as damages are paid in other cases under the provisions of this act; and all amounts so paid to said district sought to be connected with, as compensation for the cost of maintenance, shall be used as an additional fund for the maintenance of said diking system of such district, and the amount of compensation paid for the privilege of connecting with the system of such district shall also be added to the general fund of said district, to be used for the payment of the cost of maintenance of the system of such district sought to be connected with. [1895 c 117 § 21; RRS § 4270. Formerly RCW 85.04.435, part.]

85.05.220 Connecting with other diking systems. In case it shall be found necessary to enlarge or strengthen the system of dikes sought to be connected with, by reason of such connection, the jury shall determine the cost of such enlarging or strengthening, and said petitioner district shall have the right, by and through its representatives, assistants and employees, to make such improvement on the system of such other district as may have been found necessary upon the hearing of said petition, and the costs thereof shall be assessed against the landowners of said petitioner district to be benefited by the construction of said entire system, and no additional cost or burden, by reason of such improvement, shall be thrown upon the landowners of said district sought to be connected with. [1895 c 117 § 22; RRS § 4271. Formerly RCW 85.04.435, part and 85.04.440.]

85.05.230 Action by district to prevent washing away of stream banks. Where any diking system is sought to be constructed by any district organized under the provisions of this act along any river or watercourse to prevent overflow therefrom, and it shall become necessary to provide against the washing away of the banks of said river or watercourse so as to prevent injury to such proposed diking system, or any system which may have already been completed, such district, by and through its board of commissioners, may make such portions of lands lying along said dikes which are threatened to be washed away by said river or watercourse part of the right-of-way of said dike system, and may construct along the banks of said river or watercourse, as a part of said diking system, such protection as may be necessary to protect said dike, and in such cases such tract or parcel of land may be condemned and appropriated under the law of eminent domain as provided herein as a part of the right-of-way of such dike system; and when not condemned or appropriated at the time said system is established and constructed, said diking district, by and through its board of commissioners, may, at any time thereafter, when any portion of said system is threatened to be washed away by such river or watercourse, file their petition with the court condemning and appropriating for the use of said district so much of the land lying along said river or watercourse as may be necessary

to be used for the protection of said diking system, and the proceedings therein for the making of compensation therefor and the payment of damages by reason of such appropriation shall be the same, or as near as may be applicable, as other proceedings for the condemnation of right-of-way provided for in this act. [1895 c 117 § 23; RRS § 4272. Formerly RCW 85.04.420, part.]

85.05.240 Action by district to prevent washing away of stream banks—Expenses for appropriation of land. Whenever any land is appropriated along the bank of any river or watercourse, as provided for in the last preceding section, the expenses of such appropriation, including the costs and damages to be paid therefor—when such appropriation is taken subsequently to the construction of any system of dikes under the provisions of this act—shall be added to the annual cost of the maintenance of said system and be paid as such, as provided herein. [1895 c 117 § 24; RRS § 4273. Formerly RCW 85.04.420, part.]

85.05.250 Dikes along public road. In the construction of any diking system under the provisions of this act, where it is desired to construct the same along the right-of-way of any public road which has theretofore been legally established, said district shall have a right to construct its dikes along such road: *Provided*, That the dikes so constructed along such road shall not destroy or impair the same for the use of the public convenience as a public highway; and in case of the construction or improvement of any dike along any public highway, such dike shall be constructed of sufficient width and in such manner as will be conducive to the public as a public highway. [1895 c 117 § 25; RRS § 4274. Formerly RCW 85.04.425.]

85.05.260 Incorporated town may act as or be included in diking district. Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a diking district under the provisions of this act, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [1895 c 117 § 26; RRS § 4275. Formerly RCW 85.04.115, part.]

85.05.270 Estimate for maintenance and repair—Emergency expenditures. On or before the first day of November of each year the diking commissioners shall, and on or before the first Monday in October of each year the drainage commissioners shall, make and certify to the county auditor an estimate of the cost of maintenance and repair of the improvement for the ensuing year. The amount thereof shall be levied against the land in the district in proportion to the maximum benefits assessed, and shall be added to the general taxes and collected therewith. If such estimate of the cost of maintenance and repair against any tract or contiguous tracts owned by one person or corporation is less than two dollars, then the county auditor shall levy such a minimum amount of two dollars against such tract or

contiguous tracts, and upon the collection thereof as herein provided shall pay all sums collected into the maintenance and/or repair fund of the district. In case of an emergency the commissioners may incur additional obligations and issue warrants therefor in excess of the estimate. [1959 c 209 § 10. Prior: (i) 1913 c 89 § 2; 1905 c 7 § 2; 1895 c 117 § 27; RRS § 4276. (ii) 1917 c 133 § 2; 1907 c 120 § 1; 1905 c 173 § 3; 1895 c 115 § 24; RRS § 4324. Formerly RCW 85.04.120.]

85.05.280 Organization of board—Warrants, how issued. The board of commissioners of such district shall elect one of their number chairman and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: *Provided*, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [1985 c 396 § 38; 1895 c 117 § 28; RRS § 4277. Formerly RCW 85.04.040, part and RCW 85.04.165, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.355 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 23.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.05.360 Warrants presented for indorsement—When and how paid. All warrants issued under the provisions of this act shall be presented by the owners thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks, consecutively, and said warrants shall be called in and paid in the order of their indorsement. [1986 c 278 § 29; 1895 c 117 § 36; RRS § 4286. Formerly RCW 85.04.170, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.05.365 Certificates of delinquency—Foreclosure—Sale—Use of proceeds. Whenever any diking district assessments levied under this act shall remain unpaid for a period of four years from the date when such assessment becomes due and payable, the diking district, which levied said assessment or assessments is hereby empowered and authorized, through its board of commissioners, to make application to the county treasurer of the county in which said diking district is located, for a certificate of delinquency to be issued to it for said delinquent assessments and delinquent interest thereon. And the county treasurer shall issue to said diking district a certificate of delinquency in the same manner and form as to an individual: *Provided, however,* That it shall not be necessary or required for said diking district to pay to said county treasurer any part or portion of said delinquent assessments or interest thereon, but payment of general taxes and interest due upon said general taxes, upon said diked lands will be sufficient payment by said diking district to entitle it to have said certificate of delinquency issued to it. Said diking district shall be empowered to foreclose said certificate or certificates and take title in said district the same as delinquent tax certificates are foreclosed by individuals. After acquiring title to any such lands through such foreclosure proceedings, the diking district, through its commissioners, may offer for sale and sell all, or any part, of such lands, in the same manner as counties are authorized to offer for sale and sell lands acquired by counties through delinquent tax foreclosure sales; and to issue a deed of conveyance therefor to the purchaser, executed by the commissioners of the diking district in behalf of the district, and attested by the clerk of the district. All revenue derived by the diking district from the sale of any such lands shall be first used for the redemption of any bonds and interest outstanding against said diking district which is due and payable, and the remainder thereof, if any, shall be applied to the payment of maintenance warrants, or other indebtedness, of the district, which is due and owing, in the priority deemed best by the board of diking commissioners. [1931 c 55 § 1; 1929 c 111 § 1; RRS § 4286-1. Formerly RCW 85.04.510, part.]

85.05.366 Funds to purchase delinquent certificates. For the purpose of raising funds to purchase certificates of delinquency each diking district is authorized to levy an annual assessment upon the acreage contained within the diking district at the same time and in the same manner as other assessments of the district are levied; and for the purpose of raising funds to purchase certificates of delinquency upon delinquent diking district assessments during the year 1929, each diking district is authorized to issue emergency warrants, the payment and redemption of which shall be provided for at regular annual meeting in the year 1929; and thereafter all amounts raised for the purchase of delinquent diking assessment certificates shall be provided for at the regular annual meeting set for such purpose. [1929 c 111 § 2; RRS § 4286-2. Formerly RCW 85.04.515.]

85.05.367 Lands owned by district exempt from taxation. Any and all lands purchased and acquired by the diking district through foreclosure of delinquent assessment certificates shall, so long as owned by, or until sold by, such diking district, be exempt from general state and county taxes. [1929 c 111 § 3; RRS § 4286-3. Formerly RCW 85.04.510, part.]

85.05.370 Trial—Findings and forms of verdict. Upon the trial of any questions of issue by a jury under the provisions of this act, the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [1895 c 117 § 37; RRS § 4287. Formerly RCW 85.04.205, part.]

85.05.380 Public lands subject to assessment—Rights and liabilities of public corporations. All state, county, school district or other lands belonging to other public corporations requiring to be diked as a protection from overflow shall be subjected to the provisions of this act, and such corporations, by and through the proper authorities, shall be made parties in all proceedings therein affecting said lands and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [1895 c 117 § 38; RRS § 4288. Formerly RCW 85.04.110, part.]

85.05.390 Assessments on public lands—How paid. In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporations at the times and in the same manner as assessments are called and paid in case of private persons out of any general fund of such corporation; and also all costs of repair and maintenance of such diking system shall be levied against and apportioned to such lands of such public corporations, whether owned at the time of the original improvement or subsequently acquired either by deed through delinquent tax foreclosure or otherwise, in the same manner as such costs of repair and maintenance are levied against and apportioned to lands belonging to private persons, and the same shall also be paid out of any general fund of such corporation. [1927 c 277 § 1; 1895 c 117 § 39; RRS § 4289. Formerly RCW 85.04.110, part.]

85.05.400 Fees for service of process. Fees for service of all process necessary to be served under the provisions of this act shall be the same as for like services in other civil cases, or as is or may be provided by law. [1895 c 117 § 40; RRS § 4290. Formerly RCW 85.04.200, part.]

85.05.410 Compensation of commissioners. Members of the board of diking commissioners of any diking district in this state may receive as compensation the sum of up to twenty-five dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners, and shall receive the same compensation as other labor of a like character for all other necessary work or services performed in connection with their duties: *Provided*, That such compensation shall not exceed three thousand dollars in one calendar year, except when the commissioners declare an emergency. Allowance of such compensation shall be established and approved at regular meetings of the board, and when a copy of the extracts of minutes of the board meeting relative thereto showing such approval is certified by the secretary of such board and filed with the county auditor, the allowance made shall be paid as are other claims against the district.

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. [1985 c 396 § 39; 1974 ex.s. c 39 § 1; 1951 c 30 § 1; 1909 c 171 § 1; 1895 c 117 § 41; RRS § 4291. Formerly RCW 85.04.400.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.420 Powers of court—Injunctions. The court may compel the performance of the duties imposed by this act and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [1895 c 117 § 42; RRS § 4292.]

85.05.430 Sale of unneeded property—Authorized. Whenever, in the judgment of a board of commissioners of any diking district heretofore or hereafter organized, real or personal property, or any part thereof, owned by said district, is no longer of use to or needed by such district, or if personal property has become obsolete, the same may be sold by the board of commissioners of said district at public or private sale. [1955 c 342 § 2. Formerly RCW 85.04.550.]

85.05.440 Sale of unneeded property—Resolution of intention—Notice of hearing—Publication and posting. Whenever in the judgment of the commissioners of any diking district, it is advisable so to sell real or personal property, the board of commissioners of such district shall pass a resolution declaring its intention to make such sale, describing the property to be sold and stating the terms of such sale. The resolution shall set a date upon which the board shall meet, to determine whether or not such sale shall be made. Thereafter a copy of such declaratory resolution and a notice of hearing thereon shall be posted under the direction of the board, in three public places in such district at least ten days before the date of hearing. The notice shall state

the time and place of hearing, describe the property to be sold and the terms of the proposed sale. In addition a copy of such resolution and of such notice of hearing thereon shall be published twice, at least two weeks prior to such proposed sale in some newspaper qualified for legal publication in accordance with the provisions of chapter 65.16 RCW, of general publication in the county in which such diking district is located. [1955 c 342 § 3. Formerly RCW 85.04.551.]

85.05.450 Sale of unneeded property—Protests—Resolution of final action—Conveyance. At the time set for hearing, or at any time to which said hearing may be adjourned, any district elector within such district may appear and file a written protest against the proposed action of the board, which protest shall state clearly the basis thereof. At such hearing, which shall be public, the board shall give full consideration to the proposed sale and all protests filed, either written or oral and on said date or at any adjourned date, take final action thereon by resolution of the board. This resolution shall provide that upon payment of the purchase price involved, conveyance of the property shall be made by a majority of the board of said district, by deed if the property be real property; by bill of sale if the property be personal property, conveying the property sold to the purchaser thereof, and such conveyance shall pass to the purchaser such title as the district has to the property. [1955 c 342 § 4. Formerly RCW 85.04.552.]

85.05.460 Sale of unneeded property—Conveyance delayed if protests filed—Appeal. If protests be filed against such sale, such conveyance shall not be executed or delivered until more than ten days elapse from the date of the hearing at which the resolution directing the sale, was passed. If appeal be taken by a protestant from the action of the board, such conveyance shall not be executed until termination of proceedings on appeal is had, and then only if the result of such appeal does not prevent such sale. [1955 c 342 § 5. Formerly RCW 85.04.553.]

85.05.470 Sale of unneeded property—Direct action in superior court by protestant on final order. Any protestant who filed a protest prior to the final order of the board, may appeal from such final order, but to do so must within ten days from the date said order was entered, bring direct action in the superior court in the county wherein such district or portion thereof is situated, against such board of commissioners in their official capacity, which action shall be prosecuted under the procedure of civil actions, with right of appeal to the supreme court or the court of appeals as provided in civil actions. In any such action so brought, the order of the board shall be conclusive of the regularity and propriety of the proceedings, and all other matters, except it shall be open to attack upon the ground of fraud, unfair dealing, arbitrary or unreasonable action of the board. [1971 c 81 § 158; 1955 c 342 § 6. Formerly RCW 85.04.554.]

85.05.490 Levy for preliminary expenses. Whenever the board of county commissioners have passed a resolution establishing a diking district and prior to the commencement or the completion of the work of such improvement, the county commissioners may, and at the request of the diking commission shall, at the time of levying taxes each year until the improvement has been completed and a statement of the total costs has been filed, levy an assessment against the property within the district to defray the preliminary expenses of the district; the levy to be based upon the estimated benefits as shown by the report of the county engineer on file with the auditor, if such report is on file, and if not, as shown by the certificate or resolution of the diking commissioners of said diking district. The assessment so made shall be credited to the respective pieces of property. The preliminary assessment herein provided for shall be levied and collected in the same manner as county and state taxes are levied and collected, which amount shall be credited to the construction fund and used for the redemption of warrants issued against the same, which warrants shall be called and paid in numerical order. [1933 c 39 § 1; RRS § 4247-1. Formerly RCW 85.04.405, part.]

85.05.500 Levy for preliminary expenses—Preliminary expenses defined. Preliminary expenses shall mean all of the expenses incurred in the proceedings for the organization of said district and in other ways to be incurred prior to the beginning of actual construction of the improvement and shall be paid from the fund hereby created from time to time upon call of the treasurer. [1933 c 39 § 2; RRS § 4247-2. Formerly RCW 85.04.405, part.]

85.05.540 Plat of reclaimed land—Benefits to be determined and paid. Where tide or other unsurveyed lands are reclaimed by a diking district and the owner of said lands shall desire to plat the same into lots, tracts or subdivisions, such plat shall specify and acknowledge the total benefits then a charge against each lot, tract or subdivision in said plat. Before a plat shall be approved or filed, same shall be submitted to the board of dike commissioners for their consideration. In case the owner and such board cannot agree as to the adjudged maximum benefits to be charged as the lien of the district and acknowledged to be such against each lot, tract or subdivision in such plat, any interested party may cause an action to be brought in the superior court of the county to have the just amount determined, and the decree of the court in such cause shall fix the amount of such lien and the same shall be conclusive and binding. In fixing the amount to be charged against the several lots, tracts and subdivisions, the adjudged benefits per acre, allowing credits for the benefits levied and paid at said time, shall be taken as the basis for determining the sum to be charged. The amount of adjudged benefits against property dedicated to the public for roads and highways in such plat shall be charged back against the abutting subdivisions and tracts in a just and equitable manner. All diking district assessments levied against

the lands included in the plat shall be paid in full at the time said plat is approved. When approved such plat shall be filed with the county auditor of the county. Thereafter the lands within said plat shall be conveyed, assessed and taxed with reference to said plat. [1925 ex.s. c 69 § 4; RRS § 4292-4. Formerly RCW 85.04.505.]

85.05.550 Plat of reclaimed land—Construction, application of RCW 85.05.510 through 85.05.550. Nothing in RCW 85.05.510 through 85.05.550 shall be construed as repealing or modifying any act or statute now in force pertaining to diking districts, but the rights and remedies hereby granted shall be deemed cumulative as to the districts to which RCW 85.05.510 through 85.05-550 is limited. RCW 85.05.510 through 85.05.550 shall apply to districts heretofore or hereafter organized and to property owners' petitions heretofore or hereafter filed; provided that the decision of the board of dike commissioners of a district to which RCW 85.05.510 through 85.05.550 applies to issue bonds of a district under existing law or under RCW 85.05.510 through 85.05.550, shall be conclusive of such election. [1925 ex.s. c 69 § 5; RRS § 4292-5. Formerly RCW 85.04.490, part.]

85.05.605 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Diking districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 11.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.05.610 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress. Notwithstanding the provisions of *RCW 85.05.020, any diking or drainage district or diking and drainage district organized pursuant to chapter 85.05 RCW as now or hereafter amended, may annex and assume, or such district may be organized for the purpose of assuming, and may take over, maintain, operate and extend any diking and drainage systems which have been heretofore erected and operated or may be hereafter erected and operated by the government of the United States of America or any political subdivision or agency thereof, whenever the congress of the United States by permissive legislation authorizes the transfer of maintenance and operations functions to state and local nonfederal agencies. [1967 c 184 § 19.]

***Reviser's note:** RCW 85.05.020 was repealed by 1985 c 396 § 87. For special district creation and operation see chapter 85.38 RCW.

Severability—1967 c 184: "If any provision of this 1967 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 184 § 25.] This applies to RCW 85.15.010 through 85.15.170, and 85.05.610 through 85.05.650.

85.05.620 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Indian trust

lands and restricted lands may be included, when. Any district organized pursuant to RCW 85.05.610 or pursuant to any other provisions of chapter 85.05 RCW as now or hereafter amended may include any Indian trust lands and restricted lands whenever the congress of the United States (1) authorizes the inclusion of such lands in such district and (2) provides authority for such district to assess and to tax such lands for necessary expenses in the maintenance, operations and capital improvements on such diking and drainage system. [1967 c 184 § 20.]

85.05.630 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Vesting of right, title and interest to dikes and land. Whenever the congress of the United States provides for the transfer of all right, title and interest to any dikes and to the lands upon which they are situated to any state or local non-federal agency, the title to such land and to the dikes shall pass to the county wherein the dikes are situated for the use and benefit of any district which may be organized pursuant to RCW 85.05.610 or pursuant to any other provisions of chapter 85.05 RCW as now or hereafter amended, until completion of organization of such district. In any case in which a district has been organized, all right, title and interest to such lands and dikes shall vest immediately in the diking and drainage district. [1967 c 184 § 21.]

85.05.640 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Definitions. For purposes of RCW 85.05.610 through 85.05.650:

(1) The word "owner" as it appears in chapter 85.05 RCW shall include the owner of any undivided interest in any tract of land within the district boundaries, whether Indian trust land or restricted land, or non-Indian land;

(2) The "acreage" owned by any owner in any undivided estate interest shall be computed by multiplying the owner's fractional undivided interest against the total acreage embraced within a particular tract or lot assessed; and

(3) The names of the owners of Indian lands, the size of Indian tracts and lots, the fractional undivided interest therein and the "acreage" of each owner as determined according to the provisions of subsection (2) of this section shall, in any proceeding to organize and operate a district under the provisions of RCW 85.05.610 or pursuant to any other provision of chapter 85.05 RCW as now or hereafter amended, be conclusively determined by the certificate of the superintendent of the Indian agency of the Bureau of Indian Affairs having supervision over the Indian reservation in which such Indian lands may be located or by the certificate of the area director over the Bureau of Indian Affairs area encompassing such lands; and such certificate shall be accepted in lieu of all other evidence in the records of the county in which such lands are situated. [1967 c 184 § 22.]

85.05.650 Authority to annex and assume diking and drainage systems erected and operated by United States upon permissive legislation by congress—Ratification and confirmation of prior acts. The acts and resolutions of all boards of county commissioners heretofore authorizing the organization and operation of any diking and drainage districts, following any provisions of chapter 85.05 RCW, and the acts and resolutions of all diking and drainage districts heretofore organized following acts of congress permitting the taking over and operation and maintenance of existing diking and drainage systems by the state and local nonfederal governmental agencies, are ratified and confirmed. [1967 c 184 § 23.]

Chapter 85.06

DRAINAGE DISTRICTS AND MISCELLANEOUS DRAINAGE PROVISIONS

Sections

	PART I—DRAINAGE DISTRICTS
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Reviser's note: Part I of this chapter consists of chapter 115, Laws of 1895 as it has been amended and added to; thus the term "this act" has been translated to read "this chapter" throughout Part I. In Part II a number of miscellaneous acts relating to drainage districts have been codified; throughout Part II interval translations of the term "this act" have been made where they occur.

Special district creation and operation: Chapter 85.38 RCW.

PART I—DRAINAGE DISTRICTS

85.06.010 Districts authorized—Powers—Management. Any portion of a county, requiring drainage, which contains five or more inhabitants and freeholders therein may be organized into a drainage district, and when so organized such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. ----- (here insert number), of the county of ----- (here insert the name of the county), of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district, have the

power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [1895 c 115 § 1; RRS § 4298. Formerly RCW 85.04.005, part.]

85.06.015 Certain powers and rights governed by chapter 85.38 RCW. Drainage districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 32.]

Severability—1985 c 396: See RCW 85.38.900.

85.06.070 Eminent domain powers—Purchase of real property authorized. All drainage districts organized or that may hereafter be organized under the provisions of this chapter or the acts amendatory thereof shall have the right of eminent domain, with the power by and through its board of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system or systems of drainage, and make just compensation therefor, and such right of eminent domain may be exercised either within or without the boundaries of such districts, and may be exercised with respect to rights of way for ditches, drains, dams, outlets or any other necessary appliances or structures and whether for the original system or any additions, enlargements or extensions thereof or for additional outlets or systems of drainage: *Provided*, That the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: *Provided, further*, That the said board of commissioners shall have the power to acquire by purchase all the real property necessary to make the improvements herein provided for. [1919 c 179 § 2; 1895 c 115 § 7; RRS § 4305. Formerly RCW 85.04.605, part.]

85.06.080 Commissioners—Powers and duties. The board of drainage commissioners shall consist of three elected commissioners. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW. The board shall have exclusive charge of the construction and maintenance of all drainage systems which may be constructed by said district and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. [1985 c 396 § 41; 1913 c 86 § 3; 1895 c 115 § 8; RRS § 4306. Formerly RCW 85.04.045, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.06.090 Petition for improvement—Contents. Whenever it is desired to prosecute the construction of a system of drainage by said drainage district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the

route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, with draughts of any artificial appliances or equipment necessary in aid thereof, together with the estimated cost of such proposed improvement, showing therein the names of the landowners whose lands are to be benefited by such proposed improvement; the number of acres owned by each landowner, and the maximum amount of benefits per acre to be derived by each landowner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the landowners through whose land the right of way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such landowners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvement; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from said proposed improvement shall be estimated in said petition against said road or railroad: *Provided, however,* That all maps, plats, field notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this chapter, may be used under the provisions of this chapter. [1913 c 86 § 4; 1905 c 175 § 2; 1895 c 115 § 9; RRS § 4307. Formerly RCW 85.04.050, part.]

85.06.100 Petition for improvement—Employment of assistants—Compensation as costs in suit. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the

court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [1895 c 115 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

85.06.110 Summons—Contents—Service. A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by the improvement, and stating the court wherein the petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. The summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of that person or party from his or her usual place of abode, by leaving a copy of the notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations, the service shall be made upon the president, secretary or other director or trustee of the corporation; in case of persons under eighteen years of age, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of the person; in the case of mentally ill or mentally incompetent persons, on their guardian or limited guardian; or in case no guardian or limited guardian shall have been appointed, then on the person and on the person in whose care or charge the person is found. *In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in the real or other property is a nonresident of this state, or where the residence of the owner or person is unknown, and an affidavit of one or more of the commissioners of the district shall be filed that the owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by the deponent, service may be made by publication thereof in a newspaper of general circulation in the county where the lands are situated, once a week for three successive weeks. The publication shall be deemed service upon each nonresident person or persons whose

residence is unknown. The summons may be served by any competent person eighteen years of age or over. Due proof of service of the summons by affidavit or publication shall be filed with the clerk of the court before the court shall proceed to hear the matter. Want of service of notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: *Provided*, That personal service upon any party outside of the state shall be of like effect as service by publication. [1985 c 469 § 72; 1977 ex.s. c 80 § 74; 1971 ex.s. c 292 § 57; 1895 c 115 § 11; RRS § 4309. Formerly RCW 85.04.060, part.]

***Reviser's note:** The case of *Payne v. State*, 156 Wash. 31 states that the provisions of this section relating to the service of summons on the county auditor were repealed by implication by 1909 c 154 § 6 which provided for such service upon the commissioner of public lands. Subsequently 1919 c 164 was enacted containing similar provisions and providing for service upon the commissioner of public lands, and was amended by 1963 c 20 §§ 4 and 5 to provide for service upon the budget director and the chief administrative officer of the agency having jurisdiction over such land. Those sections, codified as RCW 47.20.020 and 47.20.030, were repealed by 1970 ex.s. c 51 § 178.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

85.06.120 Appearance of defendants—Jury—Verdict—Assessment of damages and benefits—Decree. Any or all of said defendants may appear jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits, as herein provided, if in attendance upon his court; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number,

such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvements and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre to be derived by each of the landowners, and also the maximum amount of benefits resulting to any municipality, public highway, corporate road, or district from construction of said improvement. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district. [1909 c 143 § 2; 1895 c 115 § 12; RRS § 4310. Formerly RCW 85.04.065, part.]

85.06.125 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which drainage districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which drainage districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 25.]

Severability—1985 c 396: See RCW 85.38.900.

85.06.130 Assessment of benefited lands formerly omitted—Procedure—Appeals. If at any time it shall appear to the board of drainage commissioners that any lands within or without said district as originally established are being benefited by the drainage system of said district and that said lands are not being assessed for the benefits received, or if after the construction of any drainage system, it appears that lands embraced therein have in fact received or are receiving benefits

different from those found in the original proceedings, and which could not reasonably have been foreseen before the final completion of the improvement, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the drainage system of said district, and said board of drainage commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the drainage system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessment on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessments or equalizing the assessments upon lands already assessed, or both. Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other drainage district, said summons shall also be served upon the commissioners of such other drainage district. In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other drainage district, and the drainage commissioners of such other district believe that the maintenance of the drain or drains of such other district is benefiting lands within the district instituting the proceeding, said drainage commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the drainage system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the drainage system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the drainage district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention. In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private drain against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private drain is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other drainage

district and are being assessed for the maintenance of the drains of such other district, and the owner of such lands believes that the maintenance of the drain or drains of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective drains may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various drains benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such drains, and may interplead in said proceeding such other drainage district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the drain or drains of such other district. No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence. Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the drain or drains to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any drain, structure or improvement, and to credit or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvement or structures thereon or easements granted in connection therewith, affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the drainage commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the cost of construction or future maintenance of any drain or drains described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be required on such appeals. Nothing in this section contained shall be construed as

affecting the right of drainage districts to consolidation in any manner provided by law. [1971 c 81 § 159; 1917 c 133 § 1; 1901 c 86 § 1; 1895 c 115 § 13; RRS § 4311.]

Reviser's note: Provisions similar to those contained in this section but relating to diking districts were held unconstitutional in *Malim v. Benthien*, 114 Wash. 533 (1921); see note following RCW 85.05.130.

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

85.06.140 Dismissal of proceedings, when—Costs.

In case the damages or amount of compensation for such right-of-way, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, or will not have sufficient outlet, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [1895 c 115 § 14; RRS § 4312. Formerly RCW 85.04.070, part.]

85.06.150 Procedure to claim awards. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1895 c 115 § 15; RRS § 4313. Formerly RCW 85.04.210, part.]

85.06.160 Transcript of benefits to auditor—Assessments—Collection—Supplemental assessment.

Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to

the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: *Provided*, That said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith; *Provided further*, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work; *Provided further*, That where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any drainage system, alterations, extensions or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided in this section for the original assessment. [1907 c 242 § 1; 1895 c 115 § 16; RRS § 4316. Formerly RCW 85.04.080, part.]

85.06.180 Construction—Contractors—Performance bonds. After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: *Provided*, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said

agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: *Provided further*, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified; that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district. [1895 c 115 § 18; RRS § 4318. Formerly RCW 85.04.095, part.]

85.06.190 Substantial changes in plans—Procedure. The work on said improvement shall begin and shall be completed with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the landowners to be benefited thereby, and the landowners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said landowners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the landowners or others claiming any lien or interest therein appearing of record in said district, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said landowners will be affected by such proposed change in said improvements,

then the court, after having passed upon all preliminary questions as in the original proceedings may call a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said landowners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein. [1909 ex.s. c 13 § 1; 1895 c 115 § 19; RRS § 4319. Formerly RCW 85.04.100, part.]

85.06.200 Payments on contracts—Retained percentage. During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: *Provided*, That no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five percent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five percent of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [1895 c 115 § 20; RRS § 4320. Formerly RCW 85.04.105, part.]

85.06.210 Connecting private drains—Procedure—Costs. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right-of-way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such landowner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and

in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. That the costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right-of-way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: *Provided*, That such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties, to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause. [1895 c 115 § 21; RRS § 4321. Formerly RCW 85.04.640.]

85.06.220 Connecting with lower districts—Procedure. In case of the establishment of a drainage district and system of drainage under the provisions of this chapter above any other district that may have theretofore been established and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the superior court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore provided for in this chapter. All the landowners in said

lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceeding; and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceeding shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required shall be assessed to the landowners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right-of-way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the landowners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved and enlarged, and such fact shall be determined in said cause and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount so found, and the same shall be paid each year as the cost of construction is paid as provided for in this chapter, and the amount so paid shall be held by said lower district as an additional fund for the maintenance of its said system as improved and enlarged by said upper district. [1895 c 115 § 22; RRS § 4322. Formerly RCW 85.04.645.]

85.06.230 City or town may act as or be included in drainage district. Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions

of this chapter, or the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [1895 c 115 § 23; RRS § 4323. Formerly RCW 85.04.115, part.]

85.06.240 Estimate for maintenance and repair—Emergency expenditures. See RCW 85.05.270.

85.06.250 Organization of board—Warrants, how issued. The board of commissioners of such district shall elect one of their number chairman and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district, which shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: *Provided*, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [1985 c 396 § 42; 1895 c 115 § 25; RRS § 4325. Formerly RCW 85.04.040, part and 85.04.165, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.06.255 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 24.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.06.330 Warrants presented for indorsement—When and how paid. All warrants issued under the provisions of this chapter shall be presented by the owners thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this chapter until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: *Provided*, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [1986 c 278 § 30; 1895 c 115 § 33; RRS § 4333. Formerly RCW 85.04.170, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.06.340 Trial—Findings and forms of verdict. Upon the trial of any questions of issue by a jury under

the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [1895 c 115 § 34; RRS § 4334. Formerly RCW 85.04.205, part.]

85.06.350 Public lands subject to assessment—Rights and liabilities of public corporations. All state, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [1895 c 115 § 35; RRS § 4335. Formerly RCW 85.04.110, part.]

85.06.360 Assessments on public lands—How paid. In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the same manner as assessments are called and paid in case of private persons, out of any general fund of such corporation. [1895 c 115 § 36; RRS § 4336. Formerly RCW 85.04.110, part.]

85.06.370 Fees for service of process. Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [1895 c 115 § 37; RRS § 4337. Formerly RCW 85.04.200, part.]

85.06.380 Compensation and expenses of commissioners. In performing their duties under the provisions of this title the board and members of the board of drainage commissioners shall receive as compensation up to twenty-five dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: *Provided*, That such services and compensation are allowed and approved at a regular meeting of the board. Upon the submission of a copy, certified by the secretary, of the extracts of the relevant minutes of the board showing such approval, to the county auditor, the same shall be paid as other claims against the district are paid. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including his subsistence and lodging, while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle in accordance with chapter 42.24 RCW. [1985 c 396 § 43; 1980 c 23 § 2; 1959 c 209 § 1; 1947 c 76 § 1; 1907 c 62 § 1; 1895 c 115 § 38; RRS § 4338. Formerly RCW 85.04.600.]

Severability—1985 c 396: See RCW 85.38.900.

85.06.390 Improvement of watercourses—Preservation of vested rights. The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, may be improved and completed as a system under the provisions of this chapter: *Provided*, That vested rights in any such watercourse acquired by appropriation of the water thereof for irrigation, mining or manufacturing purposes under existing law, shall not be disturbed. [1903 c 38 § 1; 1895 c 115 § 39; RRS § 4339. Formerly RCW 85.04.650.]

85.06.400 Powers of court—Injunctions. The superior court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [1895 c 115 § 40; RRS § 4340. Formerly RCW 85.04.755.]

PART II—MISCELLANEOUS DRAINAGE PROVISIONS

85.06.500 Extension or enlargement of system. Whenever it shall appear to the board of commissioners of any drainage district now organized or that may be hereafter organized under the laws of the state of Washington, that existing drainage systems or improvements are inadequate or insufficient to properly drain the lands within said district or any portion or portions thereof, such commissioners shall have the power and they are hereby authorized to construct such additional system or systems or to extend, add to, or enlarge any existing system as in their judgment is necessary. In such event the procedure for the establishment of such additional system or extension of existing system and the manner and method of the payment of the cost of construction and maintenance of the same by the assessment of the lands particularly benefited thereby, as well as the obtaining of necessary rights of way shall be the same as that provided by existing laws for the establishment of the original drainage system within said district. In the exercise of any of the powers herein granted it shall be immaterial whether the outlet of any of the ditches, drains, or other necessary structures or appliances are to be located within or without the boundaries of said district. This section is intended to grant supplemental and additional powers to such drainage districts and shall not be construed to limit or repeal any existing powers of such districts, nor to repeal any existing laws relating thereto. [1919 c 179 § 1; RRS § 4304. Formerly RCW 85.04.635.]

85.06.545 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Drainage districts may annex territory, consolidate with other special districts, and have their

operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 12.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.06.550 Payment of preliminary expense where proceedings are dropped. When any drainage district has been or shall be established and created under the provisions of an act of the legislature of the state of Washington, entitled "An act to provide for the establishment and creation of drainage districts, and the construction and maintenance of a system of drainage, and to provide for the means of payment thereof, and declaring an emergency", approved *March 20, 1895, and when the drainage commissioners of such district have employed surveyors or draughtsmen or legal assistance as provided in RCW 85.06.100, and have incurred expenses for the compensation of such surveyors, draughtsmen and legal assistance, and have issued to such surveyors, draughtsmen or persons rendering said legal assistance any warrants, orders, vouchers or other evidence of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said act approved *March 20, 1895, within a reasonable time, it shall be the duty of the county commissioners of the county in which such drainage district is located to assess in accordance with the provisions of RCW 85.06.550 through 85.06.630, the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon. [1903 c 67 § 1; RRS § 4492. Formerly RCW 85.04.710.]

**Reviser's note:* The act of "March 20, 1895" referred to in this section is chapter 115, Laws of 1895, the basic drainage district law, codified as Part I of chapter 85.06 RCW as it has been amended and added to.

85.06.560 Payment of preliminary expense where proceedings are dropped—Notice to present claims—Registration. The county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him, at his office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all holders and owners of warrants, orders, vouchers or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is

called for by said notice. Upon the presentation to him of such warrants, orders, vouchers or other evidences of indebtedness, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of RCW 85.06.550 through 85.06.630, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [1903 c 67 § 2; RRS § 4493. Formerly RCW 85.04.715.]

85.06.570 Payment of preliminary expense where proceedings are dropped—Petition to court for assessment—Contents. At any time after the expiration of the time within which warrants, orders, vouchers or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher or other evidence of indebtedness, may for himself and in behalf of all other holders or owners of such registered warrants, orders, vouchers or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers or other evidences of indebtedness and the costs of the proceedings provided for in RCW 85.06.550 through 85.06.630. Said petition shall set forth:

(1) That said drainage district was duly established and created, giving the time.

(2) The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, draughtsmen, or legal assistance and the issuance of such registered warrants, orders, vouchers or other evidences of indebtedness.

(3) The facts in connection with the compliance with the provisions of RCW 85.06.550 through 85.06.630.

(4) A list of such registered warrants, orders, vouchers or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively. [1903 c 67 § 3; RRS § 4494. Formerly RCW 85.04.720.]

85.06.580 Payment of preliminary expense where proceedings are dropped—Hearing to be fixed—Order for publication of notice. Upon the filing of such petition it shall be the duty of the judge of the said superior court to fix a time for a hearing of said petition, which time shall be not less than sixty days from the time of the filing of said petition, and to enter an order directed to the sheriff of the said county ordering said

sheriff to cause to be published and posted the notice as provided for in the next succeeding section. [1903 c 67 § 4; RRS § 4495. Formerly RCW 85.04.725.]

85.06.590 Payment of preliminary expense where proceedings are dropped—Notice—Contents, publication, etc. Upon the issuance of the order as provided for in the next preceding section it shall be the duty of the sheriff of said county to post, at the court house of said county and at three public places in said drainage district, and to cause to be published in a newspaper of general circulation in said county a notice of the time and place fixed by said order of court for the hearing of said petition. Said notice shall contain a statement that said petition has been filed as above provided for, that the said court has fixed a time and place for the hearing of said petition, which time and place shall be stated in said notice, a brief statement of the object of said proceeding upon said petition, a statement of the issuance of the said order of court directing the posting and publishing of said notice, a statement that all persons having any interest in any land in such drainage district, describing the same by its corporate name, may at or before the time fixed for said hearing appear and file objections or exceptions to the granting of the prayer of said petition: A statement that upon the hearing of said petition in case no objections or exceptions have been filed in said proceeding, or in case any objections or exceptions filed be not sustained, and that the allegations of said petition are proven to the satisfaction of the court an order will be entered in accordance with the prayer of said petition. That said notice shall be signed by the sheriff of said county. [1903 c 67 § 5; RRS § 4496. Formerly RCW 85.04.730.]

85.06.600 Payment of preliminary expense where proceedings are dropped—Hearing—Order for levy—Costs. At the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the court shall proceed to a hearing upon said petition and upon any objections or exceptions which have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court shall ascertain the total amount of said registered warrants, orders, vouchers or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, orders, vouchers or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced by him in such proceeding, which shall be paid

in the same manner as the said registered warrants, orders, vouchers or other evidences of indebtedness. [1903 c 67 § 6; RRS § 4497. Formerly RCW 85.04.735.]

85.06.610 Payment of preliminary expense where proceedings are dropped—Certification of order to tax levying officers. The clerk of said superior court shall certify the said order to the board of county commissioners, and to the county auditor and upon receipt of said order by said board it shall proceed forthwith to execute said order, and upon said levy being made it shall be extended upon the tax rolls, certified and collected at the same time, in the same manner as other special district taxes. [1903 c 67 § 7; RRS § 4498. Formerly RCW 85.04.740.]

85.06.620 Payment of preliminary expense where proceedings are dropped—Dismissal of petition. If upon said hearing the court shall find that the petitioner is not entitled to an order granting the prayer of said petition the court shall enter an order dismissing said petition and taxing the costs against said petitioner. [1903 c 67 § 8; RRS § 4499. Formerly RCW 85.04.745.]

85.06.630 Payment of preliminary expense where proceedings are dropped—Appeal. From any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself aggrieved thereby may take an appeal to the supreme court of the state of Washington, as provided by the general appeal law of this state. [1903 c 67 § 9; RRS § 4500. Formerly RCW 85.04.750.]

85.06.640 Additional improvements—Authorized—Change in plans. Whenever in the judgment of the commissioners of any drainage district general benefits to the entire district will accrue therefrom, or the general plan for improvement as adopted by such district will be more fully or properly carried out thereby, the board of commissioners of such district is hereby given and granted authority and power to do the following things:

(1) Straighten, widen, deepen, improve, or alter the course of or discontinue the use and maintenance of, or abandon any existing drains or ditches in said district, and when abandoned or discontinued, the right-of-way may be held or disposed of by said district in the discretion of the commissioners;

(2) Dig or construct any additional and auxiliary drains or ditches therein;

(3) Obtain, improve, or alter any existing reservoirs, spillways or outlets;

(4) Lease, acquire, build, or construct additional, new, or better reservoirs, spillways, and outlets;

(5) Lease, acquire, erect, build, or construct and operate any pumping plant and acquire equipment necessary therefor;

(6) Divert, dam, or carry off the waters of any stream or water endangering or damaging said district and protect against damage or flood from any waters whatsoever.

Provided, That in carrying out such powers, said commissioners shall not be authorized under RCW 85.06.640 through 85.06.700 to tap new sources of water which have other outlets and do not endanger the system or property of such district. [1941 c 133 § 1; 1935 c 170 § 1; Rem. Supp. 1941 § 4342-1. Formerly RCW 85.04.610.]

85.06.650 Additional improvements—Methods of payment. To pay for any work done under RCW 85.06.640 through 85.06.700, or matters incident thereto, the commissioners of said district may use any money raised or to be raised by collection of any unexhausted balance of assessed benefits as theretofore established upon the lands of said district and/or by assessments for maintenance, levied as provided by law; or they may issue warrants of such district redeemable by levies which shall be added to the annual cost of the maintenance of said system and be paid from the maintenance fund from time to time; or they may combine such methods of payment. [1935 c 170 § 2; RRS § 4342-2. Formerly RCW 85.04.625.]

85.06.660 Additional improvements—Resolution—Notice and hearing—Protests—Appeal, conclusiveness of order of board. Whenever the board of commissioners of any district desire to exercise any of the foregoing powers under *this act, it shall pass a resolution declaring its intention to do so, which shall describe in general terms the proposed improvement to be undertaken. The resolution shall set a date upon which the board shall meet to determine whether such work shall be done. Thereafter a copy of such declaratory resolution and a notice of hearing shall be posted by the secretary or member of the board, in three public places in such district at least ten days before the date of hearing. The notice shall state the time and place of hearing and that plans therefor are on file with the secretary of the board subject to inspection by any party interested.

Any property owner affected by such proposed improvement, or any property owner within such district, may appear at said hearing and object to said proposed improvement by filing a written protest against the proposed action of the board. The protest shall clearly state the basis thereof. At such hearing, which shall be public, the board shall give full consideration to the proposed project and all protests filed, and on said date or any adjourned date, take final action thereon. If protests be filed before said hearing by owners of more than forty percent of the property in said district, the board shall not have power to make the proposed improvement nor again initiate the same for one year. If the board determines to proceed with such project in its original or modified form, it shall thereupon adopt a resolution so declaring and adopt general plans therefor, which resolution may authorize the acquisition by condemnation, or otherwise, of the necessary rights and properties to

complete the same. Any protestant who filed a written protest prior to said hearing may appeal from the order of the board, but to do so must, within ten days from the date of entering of such order, bring direct action in the superior court of the state of Washington in the county wherein such district is situated, against such board of directors in their official capacity, which action shall be prosecuted under the procedure for civil actions, with the right of appeal to the supreme court or the court of appeals, as provided in civil actions. In any action so brought, the order of the board shall be conclusive of the regularity and propriety of the proceedings and all other matters except it shall be open to attack upon the ground of fraud, unfair dealing, arbitrary, or unreasonable action of the board. [1971 c 81 § 160; 1935 c 170 § 3; RRS § 4342-3. Formerly RCW 85.04.620.]

***Reviser's note:** The language "this act" refers to chapter 170, Laws of 1935, codified as RCW 85.06.640 through 85.06.700.

85.06.670 Additional improvements—Acquisition, sale of property—Contracts to share expense. In carrying out the foregoing powers, or any other powers possessed by the board of commissioners of such district, said board shall have authority to acquire by lease, contract, private purchase, or purchase at any sale, any real or personal property and to sell any real or personal property, or any part thereof, owned by said district when they find that the usefulness thereof to such district has ceased. Such board shall also have authority to enter into contracts with any other diking and/or drainage district, person, public or municipal corporation, flood control district, state, or the United States, with reference to sharing the costs or expenses of improvements for said district or the protection thereof, and bind its district by such contract. [1935 c 170 § 4; RRS § 4342-4. Formerly RCW 85.04.615.]

85.06.680 Additional improvements—Private property not to be taken without compensation. In carrying out any of the foregoing powers, said district shall not impair, damage, injure, or take any private property or interest therein, or vested rights, without just compensation being paid. [1935 c 170 § 5; RRS § 4342-5. Formerly RCW 85.04.605, part.]

85.06.690 Additional improvements—Right of eminent domain. In carrying out any of the foregoing powers, or any powers possessed by said district, it shall have the right of eminent domain to acquire any property or rights or interest therein, within or outside of the district, necessary for the use of such district for the construction and maintenance of any ditches, drains, dikes, dams, spillways, outlets, necessary appliances and structures in connection with the operation, alteration, enlargement, extension, or protection of its drainage system. The procedure for exercising the right of eminent domain shall be that provided by law for private corporations. [1935 c 170 § 6; RRS § 4342-6. Formerly RCW 85.04.605, part.]

Eminent domain by corporations generally: Chapter 8.20 RCW.

85.06.700 Additional improvements—Powers are additional—"Drainage district" defined. The powers and rights *herein granted are additional to, but not in substitution of, existing rights or powers of drainage districts. Drainage district as used *herein shall mean a regularly established drainage, or drainage improvement district, combined diking and drainage improvement district, or drainage district exercising combined diking and drainage power. [1935 c 170 § 7; RRS § 4342-7. Formerly RCW 85.04.630.]

***Reviser's note:** The language "herein" appears in 1935 c 170 codified as RCW 85.06.640 through 85.06.700.

Severability—1935 c 170: "If any section, provision, or subdivision of a section of this act shall be adjudged to be invalid or unconstitutional, such adjudgment shall not affect the validity of the act as a whole, or any other section, subdivision, or provision thereof." [1935 c 170 § 8.] This applies to RCW 85.06.640 through 85.06.700.

85.06.710 Costs in excess of estimate—Authorized—Warrants validated. Whenever any drainage district has been organized, established and created since January 1st, 1911, and extending to January 1st, 1921, in the manner provided by law, and the board of commissioners of such district have been authorized to proceed with the work of constructing a system of drainage for such district in the manner provided by law and have begun such work and expended the whole, or the major portion of the estimated cost of such improvement, and it shall have appeared to such board of commissioners that such improvement could not be completed within the estimated cost thereof so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement without expending a greater sum than the estimated cost of such improvement and that the benefits which would actually accrue to the lands of the district would be sufficient to warrant the increased expenditure necessary to complete the improvement, and such board of commissioners shall have incurred indebtedness in the name of the district to such an amount as would complete the authorized system of drainage for the benefit of the lands of the district found by the jury to be benefited by the proposed improvement, and issued the warrants of the district to cover the additional cost of completing such improvement all warrants heretofore issued for such purposes are hereby declared to be valid and legal obligations of the district so issuing the same. [1921 c 187 § 1; RRS § 4460.]

85.06.720 Costs in excess of estimate—Petition to reopen original proceedings—Damages and benefits. Whenever the board of commissioners of any drainage district shall have heretofore issued any warrants of the district for the purpose of completing a system of drainage for such district so as to produce the benefits to the lands of the district found by the jury to be benefited by the proposed improvement as provided in the preceding section, and the total estimated maximum benefits found by the jury that would accrue to the lands of the district by reason of such proposed improvement are not sufficient to cover the actual cost of such improvement, including the cost of completing the same as hereinabove provided, the board of commissioners of such district

shall file a petition in the superior court in the original proceeding for the determination of the damages and benefits to accrue from the proposed improvement, setting forth the facts, describing the lands that have been, in the judgment of the commissioners, actually benefited by the completed improvement, stating the estimated amount of benefits per acre that have accrued to each tract of land respectively, giving the name of the owner or reputed owner of such tract of land, and praying that the original proceedings be opened for further proceedings for the purpose of determining the benefits which have accrued to each tract of land actually benefited by the completed improvement. If the said board of commissioners fail or refuse to file such petition within sixty days after receipt of a written request so to do, signed by any warrant-holder, then the said warrant-holder shall have the right to file same. [1921 c 187 § 2; RRS § 4461.]

85.06.730 Costs in excess of estimate—Summons on petition—Contents—Service—Answer. Upon the filing of the petition provided for in the preceding section, summons shall issue thereon and be served on the owners of all lands described in the petition as having been benefited, in the same manner as summons is issued and served in the original proceedings for the determination of damages and benefits by reason of a proposed drainage improvement, as near as may be. No answer to any such petition shall be required unless the party served with summons desires to offset damages claimed to have been actually sustained by reason of the completed improvement in addition to the damages found by the jury in the original proceeding, and no default judgment shall be taken for failure to answer any such petition. [1921 c 187 § 3; RRS § 4462.]

85.06.740 Costs in excess of estimate—Hearing by jury—Verdict. Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons issued as provided in the preceding section, the court shall empanel a jury to hear and determine the matters in issue, and if the jury shall find that the matters set forth in the petition are true and that any of the lands of the district have been benefited by the completed improvement, after offsetting any additional damages found to have been sustained by reason thereof, it shall determine and assess the benefits which have actually accrued, and shall specify in its verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. [1921 c 187 § 4; RRS § 4463.]

85.06.750 Costs in excess of estimate—Judgment—Appeal from judgment. Upon the return of the verdict of the jury as provided in the preceding section, if it shall appear to the court that the total benefits found by the jury to have accrued to the lands of the district is equal to or exceeds the actual cost of the improvement including the increased cost of completing the same, the court shall enter its judgment in accordance therewith, as supplemental to and in lieu of the original

decree fixing the benefits to the respective tracts of land, and thereafter the assessment and levy for the original cost of the construction of the improvement, including the indebtedness incurred for completing the improvement together with interest at the legal rate on the warrants issued therefor, and all assessments and levies if any, for the future maintenance of the drainage system described in the judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in the judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal therefrom to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdict of the jury in respect to the parties to the appeal. [1971 c 81 § 161; 1921 c 187 § 5; RRS § 4464.]

Chapter 85.07

MISCELLANEOUS DIKING AND DRAINAGE PROVISIONS

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85.07.150	Adjustment of indebtedness with state.
85.07.160	Disincorporation of diking and drainage district located in class A or AA county and inactive for five years.
85.07.170	Additional powers relating to diking and drainage works.

85.07.010 Lease of equipment authorized—Disposition of proceeds. The commissioners of any diking or drainage district organized under the laws of this state, shall have power and authority to rent any machinery, tools or equipment belonging to such district, to any individual or corporation for hire under such conditions regarding the care and maintenance thereof as the commissioners may determine; and all sums of money received for the rent thereof shall be paid into the county treasury, to the credit of the district. [1979 ex.s. c 30 § 18; 1917 c 104 § 1; RRS § 4517. Formerly RCW 85.04.215.]

85.07.040 Benefit to public road, how paid. Whenever, upon the trial to fix and assess the benefits and damages resulting from the construction of any diking or

drainage system under the laws of this state, the jury shall find by its verdict that any public or county road will be benefited from the construction of such improvement, the clerk of the court in which such trial is had shall, upon the entry of the judgment upon such verdict, certify to the board of county commissioners of the county in which such road is situated the amount of benefits to such road so found and adjudged. The said county commissioners shall, upon the receipt of such certified statement, allow the same as for other road work and shall order the amount thereof to be paid out of the road and bridge fund of the road district in which the road so benefited is situated, and shall direct the auditor of said county to issue a warrant for the amount of such benefits against the road and bridge fund of such road district in favor of the county treasurer of said county. The said county treasurer shall, upon the payment of said warrant, place the proceeds therefrom to the credit of the drainage or diking district from which such benefits resulted. [1909 c 194 § 1; RRS § 4314. Formerly RCW 85.04.085, part.]

Counties to contribute for benefit to road: RCW 85.24.240.

85.07.050 Basis of supplemental assessments. Any additional assessments for the construction of any diking or drainage system, and also all assessments for the maintenance of same shall be based upon the benefits so found and adjudged, and the proportion of benefits resulting to such public or county road therefrom, on such basis, shall be allowed and paid for by such county in the same manner as in the case of the original construction. [1909 c 194 § 2; RRS § 4315. Formerly RCW 85.04.085, part and 85.04.090.]

85.07.060 Funding bonds—Authority to issue. (1) Any board of commissioners of any diking or drainage district may, at any time, without petition and on its own motion, issue bonds of such district for the purpose of funding any outstanding warrants of such district. No bonds so issued shall be sold for less than their par value. They may be sold at public or private sale. Any department or agency of the state of Washington having power to invest funds is hereby authorized and empowered to use the same to buy such bonds.

(2) Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 189; 1935 c 103 § 1; RRS § 4459-11. Formerly RCW 85.04.140, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

85.07.070 Funding bonds—Form, term, execution, interest. (1) Said bonds shall be numbered consecutively from one upwards and shall be in denominations of not less than one hundred dollars nor more than one thousand dollars each. They shall bear the date of issue, shall be made payable in not more than ten years from the date of their issue, and shall bear interest at a rate or rates as authorized by the board of commissioners, payable annually. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW

39.46.030. The bonds and any coupon shall be signed by the chairman of the board of commissioners of each district and shall be attested by the secretary of said board. The seal, if any, of such district shall be affixed to each bond, but it need not be affixed to any coupon.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 190; 1970 ex.s. c 56 § 91; 1969 ex.s. c 232 § 53; 1935 c 103 § 2; RRS § 4459-12. Formerly RCW 85.04.145.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

85.07.080 Funding bonds—Proceeds to treasurer—Use of proceeds. The proceeds derived from the sale of said bonds shall be paid by the purchaser thereof to the county treasurer for the use, benefit, and account of the district issuing same. [1983 c 167 § 191; 1935 c 103 § 3; RRS § 4459-13. Formerly RCW 85.04.155, part.]

Reviser's note: This section was both amended and repealed by 1983 c 167.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

85.07.080 Funding bonds—Registry—Use of bonds. [1935 c 103 § 3; RRS § 4459-13. Formerly RCW 85.04.155, part.] Repealed by 1983 c 167 § 270.

85.07.090 Funding bonds—Outstanding warrants due when sale proceeds received—Call. All outstanding warrants of such district so sought to be redeemed shall become due and payable immediately upon receipt by the county treasurer of the money from the sale of said bonds; and upon a call of such outstanding warrants or obligations issued by him, the same shall cease to draw interest at the end of thirty days after the date of the first publication of such call. The call shall be made by the treasurer by publishing notice thereof for two consecutive weeks in the county paper authorized to do the county printing. The notice shall designate the number of each warrant sought to be redeemed. [1935 c 103 § 4; RRS § 4459-14. Formerly RCW 85.04.175.]

85.07.100 Funding bonds—Exchange for warrants. Said bonds may be exchanged at not less than their par value for an equal amount of the outstanding warrants of the district issuing such bonds. [1935 c 103 § 5; RRS § 4459-15. Formerly RCW 85.04.140, part.]

85.07.110 Funding bonds—Assessments for payment—Special fund. It shall be the duty of the commissioners of such district annually to levy assessments sufficient to pay interest on such bonds as they fall due. They may at any time levy such additional assessment as they deem best to redeem and retire such bonds. Commencing not less than five years before the due date of such bonds, they shall determine the number of equal annual levies necessary to retire such bonds at maturity, and annually thereafter levy an assessment sufficient to liquidate all of said bonds by maturity. Such levies for interest and redemption of the bonds shall be added to

the annual cost of the maintenance of the diking or drainage system of said district. Such assessments shall be collected by the county treasurer and kept as a special fund for the sole purpose of paying interest upon and liquidating said bonds. [1983 c 167 § 192; 1935 c 103 § 6; RRS § 4459-16. Formerly RCW 85.04.160, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

85.07.120 Funding bonds—Call—Payment. It shall be the duty of the county treasurer of each county in which there may be a district issuing bonds under the provisions of RCW 85.07.060 through 85.07.120, whenever he has on hand one thousand dollars over and above interest requirements in the special fund for the payment of said bonds and interest, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of RCW 85.07.060 through 85.07.120 as he may be able to pay with the funds in his hands. The bonds shall be redeemed and paid in their numerical order, beginning with bond No. 1 and continuing until all of said bonds are paid. The treasurer's call for presentation and redemption of such bonds shall state the number of the bond or bonds so called. Thirty days after the first publication of said notice of the treasurer calling any of said bonds by their numbers, such bonds shall cease to bear interest, and the notice of call shall so state. If any bond so called is not presented, the treasurer shall hold in said fund until presentation of such bond is made, the amount of money sufficient to redeem the same with interest thereon to the date interest was terminated by such call. [1935 c 103 § 7; RRS § 4459-17. Formerly RCW 85.04.150.]

85.07.130 Civil action to strike land from assessment roll—Costs. Whenever any piece of land in any diking or drainage district in this state shall cease to be susceptible to benefit from the diking and/or drainage improvement of such district, the owner thereof may bring civil action in the superior court of the county wherein such property is situated, against the board of commissioners of such district in their official capacity, to have such property stricken from the assessment roll for such district. The procedure shall be that of other civil actions, except no judgment for costs shall be entered against such district in such proceedings. [1935 c 102 § 1; RRS § 4360-1. Formerly RCW 85.04.180.]

85.07.140 Civil action to strike land from assessment roll—Court decree—Subsequent restoration to rolls, procedure. If the court is satisfied that the status of said property has changed so that it is no longer susceptible to benefit from the improvement of such district and should be removed from the assessment roll thereof, and it be established that all benefits assessed against said lands up to the date of trial have been paid, such court may enter a decree striking such land from the assessment roll of said district, and it shall not be subject to future assessment for benefits or maintenance by such

district, unless, thereafter, it is again brought into such districts by the proceedings provided by law to extend the district or include benefited property which is not assessed. Nothing herein shall prevent such property from being again brought into said district in the manner provided by law generally for the inclusion of benefited property, if it appear at a future date that said property will receive benefits from the improvement in such district. Upon entry of such decree of the court a certified copy thereof shall be filed in the office of the auditor of such county wherein the property is situated, and upon receipt thereof, he shall correct the assessment roll of said district accordingly and strike the property therefrom. [1935 c 102 § 2; RRS § 4360-2. Formerly RCW 85.04.185.]

85.07.150 Adjustment of indebtedness with state. See chapter 87.64 RCW.

85.07.160 Disincorporation of diking and drainage district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

85.07.170 Additional powers relating to diking and drainage works. The commissioners of any drainage or diking district shall have power, on behalf of the district, to acquire, place, repair and maintain, dikes and dams, ditches, drains and outlets therefor, together with right of way therefor and access thereto, or obtain rights therein or full or joint use and maintenance thereof, when deemed by them necessary or beneficial for the protection of the district's system or its improvements, by eminent domain, purchase, or contract, with the owners or other districts through their commissioners, or other entities or persons together with power to contract by and with other districts or entities with reference to such matters and their performance.

The provisions of this section shall be construed as cumulative and shall not derogate from any other powers authorized by law for such districts. [1963 c 96 § 1.]

Chapter 85.08

DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

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Reviser's note: Chapter 85.08 RCW is almost entirely composed of chapter 176, Laws of 1913, the basic drainage improvement district act, as it has been amended and added to by subsequent legislation. Chapter 130, Laws of 1917 and chapter 157, Laws of 1921 are primarily express amendments to such basic act, however, also contained in such acts were several sections not expressly amendatory of the

basic act but which are in *pari materia* therewith; therefore, such other sections are also codified in this chapter. Further, RCW 85.08.820 contains an independent session law which is in *pari materia* and so closely connected with the subject matter of this chapter that it has been codified herein. Thus, throughout chapter 85.08 RCW the term "this act" has been translated to read "this chapter" unless because of peculiar circumstances other treatment is required in which case it is specially noted.

Repeal and Saving (1913 c 176 § 39): "Sec. 39. Chapter LXVI of the Laws of 1901 is hereby repealed, saving and excepting, however, that the provisions of said act shall continue in force and effect and shall be applicable to and shall govern all proceedings, rights and powers, in the case of ditches already contracted for, or under construction under said act, and in the case of the maintenance of the same for the current year 1913; and the method of supervision, construction, payment for the work, apportionment of costs, and assessment and collection thereof, delinquency and foreclosing thereof and penalties therefor, and all other proceedings in regard to the same, shall be as in said chapter LXVI of Laws of 1901 prescribed: *Provided, however,* That with the consent of the holders of warrants heretofore issued or hereafter issued for work already begun or contracted for under said act, or with the consent of the contractor engaged in constructing any ditch or drainage system under said act, the provisions of this act in regard to the funding of such warrants with bonds, or the payment for work with bonds and the issuance and sale thereof, and all provisions in regard to such issuing of bonds, shall be applicable to such outstanding warrants or work already begun or contracts let for work. And in such event and to the extent of the costs so acquiesced in by warrant holders or contractors, all the provisions of this act in regard to the method of payment, form, issuing and sale, of bonds and warrants, extension of the assessment over a term of years, collecting, delinquency, interest and foreclosure of the assessments, and all other proceedings in regard thereto shall be as in this act provided. In such event the county commissioners shall prescribe the method and time of payment of the assessments and whether bonds shall be issued and perform any other proper act in regard to the same, at a special meeting called for that purpose, or at the hearing on the apportionment of costs provided for in section 30 hereof.

Provided, also, That in case any of the provisions of this act shall be applied to any proceedings in regard to any ditch begun under said chapter LXVI of the Laws of 1901 and the same shall be held not to be legally applicable thereto by a court of competent jurisdiction, then appropriate and proper proceedings for the performance of said acts or duties shall be had and done in regard thereto, as in said chapter LXVI of the Laws of 1901 provided. And from the time any such drainage district organized and existing under the provisions of said chapter LXVI of the Laws of 1901, shall be brought under the provisions of this act, said district shall be known and designated in all proceedings and records relating thereto, as Drainage Improvement District No. _____ of _____ County, retaining its original serial number.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter CXV of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceeding heretofore or that may hereafter be had under the provisions of said act."

Applicability of prior laws (1913 c 176 § 40): "Sec. 40. Except as specified in the foregoing section, all of the provisions of this act, instead of said chapter LXVI of the Laws of 1901, shall be applicable to and shall govern and be the law in all respects, in regard to all ditches and drainage systems now existing, initiated or applied for under said chapter LXVI of the Laws of 1901, and all powers hereby vested in or granted to all boards and officers under this act shall be vested in such boards and officers that shall hereafter have charge of the work, or administering of the affairs of such ditches and drainage systems, and the districts in which they lie."

Severability (1913 c 176 § 41): "Sec. 41. An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid."

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review boards: Chapter 36.93 RCW.

Special district creation and operation: Chapter 85.38 RCW.

85.08.010 Definitions. "System", "improvement", and "system of improvement", as used in this chapter, shall be held to include a dike, ditch, drain or watercourse, or sewer, and any side, lateral, spur or branch dike, ditch, drain or watercourse, or sewer, or other structure, necessary to secure the object of the improvement. Any number of dikes, ditches, drains or watercourses, or sewers, with their laterals, spurs, and branches with separate outlets, or in the case of sewers with one or more septic tanks, may constitute one system for the protection or reclamation of the land included in any district. But no system shall be established or constructed unless sufficient outlet or outlets, or in the case of sewers, sufficient septic tank or tanks, are provided for any drainage or sewerage of such district. Such outlet or outlets, or septic tank or tanks, may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural watercourse may be improved in accordance with the provisions of this chapter.

"Damages", as used in this chapter, shall be held to include the value of the property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged", as used in this chapter, shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation, and roads other than public roads. "Public roads", as used in this chapter, shall be held to include state and county roads, streets, alleys and other public places; and "other roads", as used in this chapter shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads and the right-of-way, roadbeds and tracks thereof.

"Public utilities", as used in this chapter, shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph, telephone and electric transmission and pole lines, and oil, gas and other pipe lines. "County engineer", as used in this chapter, shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a system or the maintenance thereof under the provisions of this chapter. "Prosecuting attorney", as used in this chapter, shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this chapter to advise or carry on proceedings in court with reference to a system of improvement initiated and constructed under the provisions of this chapter. [1923 c 46 § 2; 1917 c 130 § 13; 1913 c 176 § 2; RRS § 4406. FORMER PART OF SECTION: 1925 ex.s. c 189 § 1, part, now codified as RCW 85.08.230.]

Reviser's note: The term "county engineer" is defined in the last paragraph of this section. Throughout this chapter the terms "engineer", "district engineer" and "county engineer" appear to have been used interchangeably in the session laws and the usage of the latest session law language has been retained herein.

Inapplicability of prior laws (1917 c 130 § 39): "Sec. 39. Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of chapter 115 or of chapter 117 of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceedings heretofore or that may hereafter be had under the provisions of said acts."

County road engineer: Chapter 36.80 RCW.

85.08.015 Certain powers and rights governed by chapter 85.38 RCW. Diking, drainage, or sewerage improvement districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 33.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.190 Eminent domain—Consolidation of actions. For the purpose of taking or damaging property for the purposes of this chapter, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways: *Provided*, That the county, at its option, pursuant to resolution to that end duly passed by the board of county commissioners, may unite in a single action, proceedings for the acquisition and condemnation of different tracts of land required for rights of way which are held by separate owners. The court may, on motion of any party, consolidate into a single action separate suits for the condemnation of different tracts of land held by separate owners whenever from motives of economy or the expediting of business it appears advisable to do so. In such cases the jury shall render separate verdicts for the different tracts of land. [1917 c 130 § 21; 1913 c 176 § 13; RRS § 4418.]

85.08.200 Verdict to fix damages and benefits—Judgment. The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: *Provided*, That the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over the benefits, and for the costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property

appropriated in the county for the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost of the improvement upon the property benefited as hereinafter provided. [1913 c 176 § 14; RRS § 4419.]

85.08.210 Warrant for damages. Upon the entry of judgment as provided in RCW 85.08.200, the county auditor shall, under the direction of the county legislative authority, draw a warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county. [1986 c 278 § 31; 1913 c 176 § 15; RRS § 4420.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.08.220 Construction to be directed, when. When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed system of improvement and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, thereupon such system of improvement or such portion thereof, as the case may be, shall be constructed in the manner hereinafter provided. [1917 c 130 § 22; 1913 c 176 § 16; RRS § 4421.]

85.08.230 Levy for preliminary expenses—Collection—"Preliminary expenses" defined. Whenever the board of county commissioners has passed a resolution establishing a district, the county commissioners may at their meeting on the first Monday in October next ensuing and at the same time in each year thereafter until the improvement has been completed and a statement of total costs has been filed, levy an assessment against the property within the district to defray the preliminary expenses of the district, the levy to be based upon the estimated benefits as shown by the report of the county engineer on file in the auditor's office. The assessment so made shall be considered and credited to the respective pieces of property by the board of appraisers and by the county commissioners at the hearing on the assessment roll and the final apportionment. The preliminary assessments herein provided for shall be levied and collected in the same manner as the final assessment and shall be credited to the construction fund and used for the redemption of warrants issued against the same. Preliminary expenses shall mean all of the expenses incurred in the proceedings for the organization of the district and in other ways prior to the beginning of the actual construction of the improvement. [1925 ex.s. c 189 § 1; RRS § 4421-1. Formerly RCW 85.08.010, part and 85.08.230.]

85.08.285 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 25.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.08.300 Supervisors—Election—Duties. The board of supervisors of the district shall consist of three elected supervisors. The initial supervisors shall be appointed, and the first elected supervisor elected, as provided in chapter 85.38 RCW. The board of supervisors shall have charge of the construction and maintenance of the systems of improvements, subject to the limitations hereinafter set forth, and may employ a superintendent of construction and maintenance who may be one of the two elected supervisors. The supervisors may be employed upon the construction or maintenance, receiving the same compensation as other labor of like character.

When a district contains not more than five hundred acres, or when a petition is presented to the county legislative authority signed by the owners of fifty percent of the acreage of the district praying for such action, the county engineer shall act as the sole supervisor of the district; and in such case the allowance of all claims against the district shall be by the county legislative authority. [1985 c 396 § 45; 1965 c 120 § 1; 1955 c 338 § 1; 1921 c 157 § 4; 1917 c 130 § 26; 1913 c 176 § 20; RRS § 4425.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.305 Supervisors—Terms of office—County engineer to act as supervisor. The county engineer shall continue to act as a supervisor of a diking, drainage, or sewerage improvement district that is governed by a three-member board of supervisors until a replacement assumes office after being elected at the 1987 special district general election. At that election two supervisors shall be elected, with the person receiving the greatest number of votes being elected to a six-year term, and the person receiving the second greatest number of votes being elected to a four-year term. Thereafter, all supervisors shall be elected to six-year terms. [1985 c 396 § 23.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.310 Construction of improvements—Contracts with United States. The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such system of improvement and shall proceed with the construction thereof in accordance with the plans adopted therefor. In the construction of any system of drainage, construction shall be begun at the outlet or outlets thereof and at such other points as may be deemed advisable from time to time. In the construction of any system of improvement the board of supervisors with the approval of the board of county commissioners may modify, curtail, enlarge or add to the original plans wherever the same may be found necessary or advisable in the course of actual construction. But such changes shall not in the aggregate increase the estimated cost of the entire system by more

than one-fifth, and all additional or different rights of way required shall be obtained as hereinbefore prescribed. The board of county commissioners may in its discretion let the construction of said system or any portion thereof by contract, in the manner provided for letting contracts for the construction of county roads and bridges. The board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the system of improvement or any part thereof, by the United States, or in cooperation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

The provisions of this section shall not be construed as denying to the supervisors, in case the construction work is left in their hands, the power to enter into an agreement with any contractor to furnish labor, material, equipment and skilled supervision, the contractor to be compensated upon the basis of a specific sum, or upon a percentage of the cost of the work, the services of the contractor to cover the use of equipment and the value of skilled supervision: *Provided, however,* That there is retained in the said board by the contract the right of termination thereof at any time, on reasonable notice, and fixing in the said contract, or reserving in said board, the right to fix the rates of wages to be paid to the men employed in said work. The board of supervisors may also let contracts in such manner and on such notice as they deem advisable for items of construction not exceeding one thousand dollars in amount of expenditures. [1921 c 157 § 5; 1917 c 130 § 27; 1913 c 176 § 22; RRS § 4427.]

85.08.320 Costs paid by voucher, payroll, or warrant—Temporary warrants—Priority—Compensation of officers and employees. The compensation of the superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the district in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the district board of supervisors. Members of the board of supervisors may receive compensation up to twenty-five dollars for attending each official meeting of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as supervisors. Each supervisor shall be entitled to reimbursement for reasonable expenses actually

incurred in connection with business, including subsistence and lodging while away from the supervisor's place of residence and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall draw interest at a rate determined by the county legislative authority until paid or called by the county treasurer as warrants of the county are called. [1986 c 278 § 32; 1985 c 396 § 46; 1981 c 156 § 23; 1917 c 130 § 28; 1913 c 176 § 23; RRS § 4428. Formerly RCW 85.08.320 and 85.08.330.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1985 c 396: See RCW 85.38.900.

85.08.340 Crossing roads or public utilities—Procedure—Costs. Whenever in the progress of the construction of the system of improvement it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the public officers, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the public officers, corporation or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the system of improvement, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the public officers, corporation or person submitting the same, and file the duplicate in his office, and shall notify such public officers, corporation or person of the time within which said crossing must be constructed. Upon the return of such approved plans, the public officers, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such public officers, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the

construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessment shall be paid out of the funds of the district. [1917 c 130 § 29; 1913 c 176 § 24; RRS § 4429. Formerly RCW 85.08.340 and 85.08.350.]

85.08.360 Total costs—Apportionment—Board of appraisers. When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of construction, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, including the costs of crossings constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sum paid or to be paid to the United States, and the discount, if any, on the bonds and warrants sold and including all other costs and expenses, including fees, per diem and necessary expenses of nonsalaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of interest borne by the warrants issued for the cost of construction. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him in connection with said improvement at a per diem of five dollars per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum which shall be not less than five percent nor more than ten percent of the total thereof in drainage improvement districts, and not less than ten percent nor more than fifteen percent of the total thereof in diking improvement districts, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and interest on the costs of construction from the date of the statement until fifty days after the filing of the assessment roll with the treasurer; and unless the same have been previously appointed, shall appoint a board of appraisers

consisting of the county engineer and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. [1917 c 130 § 30; 1913 c 176 § 25; RRS § 4430.]

85.08.370 Benefits to public roads, sewer systems—Apportionment of cost against city, county and state. Whenever any system of improvement constructed under the provisions of this chapter will drain, protect or otherwise improve the whole or any part of any public road, roadbed or track thereof, or where any such system of improvement will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the state, in the case of state primary and secondary highways, and against the county in which any other such state or county road outside of any incorporated city or town is located, or against the city or town in which any such public road is located, or against any such other road or part thereof so drained, protected or otherwise improved, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned. The board of county commissioners may pay such portion as they deem proper of the amount assessed against the county on account of the drainage, protection or improvement of the roads, out of the funds of the road district in which such drainage, protection or improvement is made. The amount assessed against the state shall be paid out of the appropriate fund of the state. [1923 c 46 § 8; 1917 c 130 § 31; 1913 c 176 § 26; RRS § 4431. FORMER PART OF SECTION: 1913 c 176 § 28 now codified as RCW 85.08.375.]

85.08.375 Benefits to state lands—Apportionment of costs. There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto. [1913 c 176 § 28; RRS § 4433. Formerly RCW 85.08.370, part.]

85.08.380 Benefits to and protection from irrigation system. In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this chapter, provision may be made for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits resulting from

such provision shall be considered in making the apportionment of the cost of such system. [1913 c 176 § 27; RRS § 4432. FORMER PART OF SECTION: 1921 c 160 § 3 now codified as RCW 85.08.385.]

85.08.385 Drainage ditches along highway, etc. Drainage ditches of any drainage improvement district heretofore or hereafter created may be constructed and maintained along any public highway, street, alley or road within the limits of any drainage district. [1921 c 160 § 3; RRS § 4409. Formerly RCW 85.08.380, part.]

85.08.390 Schedule of property and benefits—Filing. Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the *bureau of inspection and supervision of public offices, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (1) railroads, (2) street railroads, (3) interurban railroads, (4) logging roads, and (5) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be. [1913 c 176 § 29; RRS § 4434.]

***Reviser's note:** The "bureau of inspection and supervision of public offices" referred to herein has been abolished and its powers and duties transferred and devolved upon the state auditor through the division of municipal corporations by a chain of statutes as follows: 1921 c 7 §§ 55, 135; 1925 c 18 § 11; and 1927 c 280 § 11 [see RCW 43.09.190].

85.08.400 Hearing on schedule—Notice—Levy of assessment—State lands. Upon the filing of the schedule of apportionment, the county legislative authority shall fix the time and place for a hearing thereon, which time shall be not more than sixty days from the date of the filing of the schedule. Notice of the hearing shall be given in the manner provided for giving notice of a hearing in *RCW 85.08.150. The notice shall fix the time and place of the hearing on the roll, and shall state that the schedule of apportionment showing the amount of the cost of the improvement apportioned

to each county, city, town, and piece of property benefited by the improvement is on file in the office of the county legislative authority and is open to public inspection, and shall notify all persons who may desire to object thereto that they may make their objections in writing and file them with the clerk of the county legislative authority at or before the date fixed for the hearing. The notice shall also state that at the time and place fixed and at such other times and places as the hearing may be continued to, the county legislative authority will sit as a board of equalization for the purpose of considering the schedule and at the hearing or hearings will also consider any objections made thereto, or any part thereof, and will correct, revise, raise, lower, change, or modify the schedule or any part thereof, or set aside the schedule and order that the apportionment be made de novo as to such body shall appear just and equitable, and that at the hearing the board will confirm the schedule as finally approved by them and will levy an assessment against the property described thereon for the amounts as fixed by them. The county legislative authority shall serve by mail, at least ten days before the hearing, upon the commissioner of public lands of the state of Washington a like notice, in duplicate, showing the amount of the cost of the improvements apportioned against all state, school, granted, or other lands owned by the state of Washington in the district. The county legislative authority shall serve a like notice upon the state secretary of transportation showing the amount apportioned against any state primary or secondary highways. Upon receipt of the notice the commissioner of public lands or the secretary of transportation, as the case may be, shall endorse thereon a statement either that he elects to accept or that he elects to contest the apportionment, and shall return the notice, so endorsed, to the county legislative authority. At or before the hearing any person interested may file with the clerk of the county legislative authority written objections to any item or items of the apportionment. [1984 c 7 § 377; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-1.]

Reviser's note: *(1) RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

(2) The powers and duties of the commissioner of public lands have been transferred to the department of natural resources. See 1957 c 38 §§ 1, 13; RCW 43.30.010, 43.30.130.

Severability—1984 c 7: See note following RCW 47.01.141.

85.08.410 Schedule approved or modified—Maintenance assessment. At such hearing, which may be adjourned from time to time and from place to place, until finally completed, the board of county commissioners shall carefully examine and consider said schedule and any objections filed or made thereto and shall correct, revise, raise, lower, change or modify such schedule or any part thereof, or strike therefrom any property not benefited, or set aside such schedule and order that such apportionment be made de novo, as to such body shall appear equitable and just. The board shall cause the clerk of the board to enter on such schedule all such additions, cancellations, changes, modifications and reapportionments, all credits for damages allowed or

awarded to the owner of any piece of property benefited, but not paid, as provided in RCW 85.08.200; also a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in RCW 85.08.210; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in RCW 85.08.360; and all credits allowed to property owners constructing crossings as provided in RCW 85.08.340. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signature under his seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith, and shall levy the amounts so apportioned against the property benefited, and the determination by the board of county commissioners in fixing and approving such apportionment and making such levy shall be final and conclusive.

The board of county commissioners shall also at said hearing, levy, in the manner hereinafter provided for the levy of maintenance assessments, such assessment as they shall deem necessary to provide funds for the maintenance of the system of improvement until the first annual assessment for maintenance shall fall due. [1983 c 3 § 230; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-2.]

85.08.420 Assessment roll—Form—Notice—

Publication. Upon the approval of said roll the county auditor shall immediately prepare a completed assessment roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. As soon as the assessment roll has been turned over to the treasurer for collection, he shall publish a notice in the official newspaper of the county for once a week for at least two consecutive weeks, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time on or before a date stated in such notice, which date shall be thirty days after the date of the first publication, without interest, and the treasurer shall accept such payment as in said notice provided. Upon the expiration

of such thirty-day period the county treasurer shall certify to the county auditor the total amount of assessments so collected by him and the total amount of assessments remaining unpaid upon said roll. [1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-3.]

85.08.430 Payment of assessments—Interest—

Lien. After the expiration of said thirty-day period, payment of assessments in full, with interest to the next interest payment date which is more than thirty days from the date of such payment, may be made at any time; *Provided*, That the aggregate amount of such advance payments in any year, together with the total amount of the assessments due at the beginning of said year, shall not exceed the total amount of the bonds which may be called in that year according to the applicable bond redemption schedule. The treasurer shall accept payments of assessments in advance, in the order tendered, until the limit herein set forth has been reached.

The assessments contained in the assessment roll shall bear interest from the expiration of the thirty-day period at a rate determined by the county legislative authority and interest upon the entire assessment then unpaid shall be due and payable at the time each of said installments becomes due and payable as a part thereof.

The assessments contained in said assessment roll shall be liens upon the property assessed, such lien shall be of equal rank with other liens assessed against the property for local improvements and paramount to all other liens except the lien of general taxes, and shall relate back to and take effect as of the date when the county legislative authority determined to proceed with the construction of the improvement as provided in RCW 85.08.220. [1983 c 167 § 195; 1981 c 156 § 24; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-4.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.

85.08.440 Appeal from apportionment—Procedure. The decision of the board of county commissioners upon any objections made within the time and in the manner prescribed in RCW 85.08.400 through 85.08.430, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of such board and with the clerk of the superior court of the county in which such drainage or diking improvement district is situated, or in case of joint drainage or diking improvement districts with the clerk of the court of the county in which the greater length of such drainage or diking improvement system lies, within ten days after the order confirming such assessment roll shall have become effective, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court a transcript consisting of the assessment roll

and his objections thereto, together with the order confirming such assessment roll, and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners, and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall execute and file with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with good and sufficient surety, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county or the drainage or diking improvement district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require; within three days after such transcript is filed in the superior court as aforesaid, the appellant shall give written notice to the prosecuting attorney of the county, and to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court of said county shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court as in other cases: *Provided, however*, That such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in this chapter. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court or the court of appeals, on such appeal, may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1971 c 81 § 162; 1921 c 157 § 1; RRS § 4436.]

Rules of court: Cf. R.A.P. 5.2, 8.1, 18.22.

85.08.450 Regularity and validity of proceedings conclusive. Whenever any schedule of apportionment of any drainage or diking improvement district shall have been confirmed, and the assessment therefor shall have been levied, by the board of county commissioners, as provided by RCW 85.08.400 through 85.08.430, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the board of county commissioners upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in RCW 85.08.400 through 85.08.430, and not appealing from the action of the board of county commissioners in confirming such assessment roll in the manner and within the time in this chapter provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: *Provided*, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

- (1) That the property about to be sold does not appear upon the assessment roll, or
- (2) That said assessment has been paid. [1921 c 157 § 2; RRS § 4437.]

85.08.460 District liable on judgments—Supplemental levy. Any judgment that heretofore has been obtained or that hereafter may be obtained against a county on account of any contract lawfully made by its officials for or on behalf of any drainage, diking, or sewerage improvement district, or on account of the construction or maintenance of any drainage, diking, or sewerage system of a drainage, diking, or sewerage improvement district shall be collected and reimbursed to the county from said improvement district, and the amount of such judgment shall be included in the construction costs of said district: *Provided*, That if such judgment be recovered after the assessment to pay the construction costs shall have been levied, then the county commissioners are hereby empowered and they shall make a supplemental levy upon the lands of the district, and from the funds collected under such levy said reimbursements shall be made. [1923 c 46 § 10; 1921 c 157 § 3; RRS § 4438.]

85.08.470 District funds. There shall be established in the county treasury of any county in which any drainage or diking or sewerage improvement is established under the provisions of this chapter, appropriate funds as follows:

- (1) The construction fund, into which shall be paid the proceeds of all bonds or warrants sold and the proceeds of all assessments paid prior to the sale of bonds or warrants. In case no bonds have been issued or warrants

have been sold, the proceeds of all assessments levied to pay the cost of construction shall be paid into such fund. All warrants including temporary warrants, issued in payment of cost of construction shall be paid out of such fund.

(2) A fund for the redemption of all bonds issued or warrants sold, to be known as the redemption fund, into which shall be paid all proceeds derived from assessments levied to pay cost of construction which shall not have been paid prior to the sale of bonds or warrants, in case bonds have been issued or warrants sold, and also all moneys, if any, remaining in the construction fund after the payment of all warrants drawn against it as above provided. The redemption fund shall be applied, first, to the payment of the interest due upon all such outstanding bonds issued or warrants sold and, second, to the payment of the principal thereof. After the payment of the principal and interest of all such bonds or warrants, the balance, if any, remaining in such fund shall be applied to the payment of any warrants outstanding, including temporary warrants, which may have been issued in payment of cost of construction which for any reason may remain unpaid. Any balance, if any, thereafter remaining shall be paid into the maintenance fund.

(3) The maintenance fund, into which shall be paid the proceeds of all assessments for maintenance, and all other funds received by the district which are not required by the provisions of this chapter to be paid into the construction fund or the redemption fund. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-1.]

85.08.480 Collection of assessments—Certificates of delinquency—Foreclosure. The respective installments of assessments for construction or maintenance of improvements made under the provisions of this chapter, shall be collected in the same manner and shall become delinquent at the same time as general taxes, certificates of delinquency shall be issued, and the lien of the assessment shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes, all according to the laws in force on January 1, 1923, except as hereinafter specifically provided.

The annual assessments or installments of assessments, both for construction and for maintenance and repairs of the diking and/or drainage system shall become due in two equal installments, one-half being payable on or before May 30th, and the other half on or before November 30th; and delinquency interest thereon shall run from said dates on said respective halves of said assessments.

The rate of interest thereon after delinquency, also the rate of interest borne by certificates of delinquency, shall be ten percent per annum. Certificates of delinquency for any assessment or installment thereof shall be issued upon demand and payment of such delinquent assessment and the fee for the same at any time after the expiration of twelve months after the date of delinquency thereof. In case no certificate of delinquency be issued

after the expiration of four years from date of delinquency of assessments for construction costs, or after the expiration of two years from date of delinquency of assessments for maintenance or repairs, certificates of delinquency shall be issued to the county, and foreclosure thereof shall forthwith be effected in the manner provided in *sections 11292 to 11317 inclusive.

The holder of a certificate of delinquency for any drainage, diking or sewerage improvement district or consolidated district assessment or installment thereof may pay any delinquent general taxes upon the property described therein, and may redeem any certificate of delinquency for general taxes against said property and the amount so paid together with interest thereon at the rate provided by law shall be included in the lien of said certificate of delinquency.

The expense of foreclosure proceedings by the county shall be paid by the districts whose liens are foreclosed: costs of foreclosure by the county or private persons as provided by law, shall be included in the judgment of foreclosure. [1933 c 125 § 2; 1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-2.]

***Reviser's note:** The internal references in the third paragraph of this section reading "sections 11292 to 11317 inclusive" refers to RRS 11292 through 11317 which sections were repealed by 1925 ex.s. c 130 § 138, with the exception of 11312, 11313, and 11314 now in RCW 78.16.010, 78.16.020 and 78.16.030 and which are not in point for purposes of this internal reference. Existing provisions generally as to certificates of delinquency and foreclosure, see chapter 84.64 RCW.

85.08.490 Title acquired at sale—Foreclosure for general taxes—Lien of assessments preserved. The purchaser, upon the foreclosure of any certificate of delinquency for any assessment or installment thereof, shall acquire title to such property subject to the installments of the assessment not yet due at the date of the decree of foreclosure, and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state.

The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all drainage or diking or sewerage improvement district assessments or any installment thereof due and outstanding against the whole or any portion of the property included in such certificate of delinquency and the amount of all assessments so paid together with interest at ten percent per annum thereon shall be included in the amount for which foreclosure may be had; or, if he elects to foreclose such certificate without paying such assessments in full, the purchaser at such foreclosure sale shall acquire title to such property subject to all such drainage or diking or sewerage improvement district assessments. Any property in any drainage or diking or sewerage improvement district sold under foreclosure for general taxes shall remain subject to the lien of all drainage and diking or sewerage improvement district assessments or installments thereof not yet due at the time of the decree of foreclosure and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-3.]

85.08.500 Resale or lease by county—Disposition of proceeds—Tax statements. Property subject to a drainage or diking or sewerage improvement district assessment, acquired by a county pursuant to a foreclosure and sale for general taxes, when offered for sale by the county, shall be offered for the amount of the general taxes for which the same was struck off to the county, together with all drainage or diking or sewerage improvement district assessments or installments thereof, due at the time of such resale, including maintenance assessments, and supplemental assessments levied pursuant to the provisions of RCW 85.08.520, coming due while the property was held in the name of the county; and the property shall be sold subject to the lien of all drainage or diking or sewerage improvement district assessments or installments thereof not yet due at the time of such sale, and the notice of sale and deed shall so state. *Provided*, That the county board may in its discretion, sell said property at a lesser sum than the amount for which the property is offered in the notice of sale. The proceeds of such sale shall be applied first to discharge in full the lien or liens for general taxes for which said property was sold, and the remainder, or such portion thereof as may be necessary, shall be applied toward the discharge of all drainage or diking or sewerage improvement district assessment liens upon such property, and the surplus, if any, shall be applied toward the payment of any delinquent or due local assessments or local assessment installments outstanding against the property levied by any authority other than that of the county, taking them in the order of their maturities, beginning with the earliest; after which if any money remains the treasurer shall hold the same for the person whose interest in the property entitles him thereto. If there be no purchaser, the property shall again be offered for sale within one year thereafter, and shall be successively offered for sale each year until a sale thereof be effected.

Property struck off to or bid in by a county may be leased pursuant to resolution of the county commissioners on such terms as the commissioners shall determine for a period ending not later than the time at which such property shall again be offered for sale as required by law. Rentals received under such lease shall be applied in the manner hereinabove provided for the proceeds of sale of such property.

All statements of general state taxes where drainage, diking or sewer improvement district assessments against the land described therein are due shall include a notation thereon or be accompanied by a statement showing such fact. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-4.]

85.08.510 Invalid levy—Reassessment. Whenever any improvement, any extension or betterment thereof shall have been constructed in whole or in part, either heretofore in a district established or attempted to be established under and by virtue of *chapter 66 of the Laws of 1901, or in a district heretofore or hereafter established or attempted to be established under this chapter, and the assessment therefor or any part thereof

shall be invalid by reason of any omission, irregularity or defect in any proceeding whatever, a reassessment shall be made upon the property benefited by the improvement to provide a fund for the payment of the costs thereof, and any bonds or warrants issued therefor in the following manner:

The board of county commissioners shall by order cause the clerk of the board to compile and file with the board an itemized statement of the total cost of the improvement in the manner prescribed by RCW 85.08.360. Upon the filing of such statement the same proceedings shall be had assessing the costs of said improvement against the lands benefited thereby and the counties, cities and towns within the district, as are prescribed by RCW 85.08.360 and subsequent sections of this act. In case no bonds have been issued or warrants sold to pay the costs of said improvement, the same may be issued and sold and disposed of as hereinbefore provided. In case an assessment for such improvement shall have been theretofore made or attempted, and any payment has been made thereon, proper credit for the amount of such payment shall be made upon the reassessment. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-5.]

***Reviser's note:** The language "chapter 66 of the Laws of 1901" refers to a prior drainage district law which was repealed by the basic act, 1913 c 176, codified in this chapter; see 1913 c 176 §§ 39, 40; see notes following chapter digest.

The language "subsequent sections of this act" first appears in 1917 c 130 § 33 amending 1913 c 176 § 31. The 1917 amendatory act was a 39 section act with sections 34 through 39 being codified as RCW 85.08.530, 85.08.540, 85.08.560 and 85.08.680. Section 34 thereof was repealed by 1949 c 26 § 18 and new subject matter thereof is in chapter 85.16 RCW. Section 39 was a construction section. The basic act in chapter 176, Laws of 1913 was a 42 section act with sections 32 through 41 being codified as RCW 85.08.530, 85.08.540, 85.08.560, 85.08.570, 85.08.670 and 85.08.680. Section 32 was repealed in the 1949 act and the new subject matter is in chapter 85.16 RCW. The other sections being construction sections are footnoted herein following the chapter digest. Notice that this section itself was a single section in the basic act of 1913 but it was divided into separate sections in 1923 c 46 § 11 codified herein as RCW 85.08.470 through 85.08.520.

85.08.520 Supplemental assessments. If upon the foreclosure of the assessment upon any property the same shall not sell for enough to pay the assessment against it, or if any property assessed was not subject to assessment, or if any assessment made shall have been eliminated by foreclosure of a tax lien or made void in any other manner, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement, including property upon which any assessment shall have been so eliminated or made void, and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency so caused in the original assessment.

If by inadvertence or for any cause the assessment levied shall be found to be insufficient to meet the entire cost of construction, a supplemental assessment shall be made by the board of county commissioners upon the lands of the district in the same proportion as the original assessment is levied, same being spread over not to exceed three years as the commissioners may determine.

Duplicate assessments or other errors that may by inadvertence be found to have been incorporated in the assessment roll may be corrected by order of the county commissioners upon same being certified to them by the treasurer and the engineer. [1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439–6.]

85.08.530 Levies against county, city or town, how paid. The amount of the costs of construction or maintenance of any system of improvement assessed against any city, town or county may be met by levies to be paid in similar installments and extending over a like period of time as the assessments against property benefited are spread, or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city, town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein. [1917 c 130 § 35; 1913 c 176 § 33; RRS § 4441.]

85.08.540 Abandonment or change in system—Subdistricts. Upon a petition and bond being filed by one or more landowners, either within or without the boundaries of a district, and like proceedings being had as in the case of the original establishment and construction of a system of improvement, the county commissioners may declare any system of improvement or any part thereof, abandoned or may strike from the district lands no longer benefited or served thereby, or they may cause any system of improvement to be altered, reduced, enlarged, added to or in any other manner bettered or improved, either within or without the district, and to effect such subsequent improvements, may exercise any of the powers which are in this chapter, or may be hereafter conferred upon such districts. But the striking of any lands from a district shall not in any way affect any assessment theretofore levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner hereinbefore provided for such apportionment and assessment in the case of original proceedings. New lands assessed for any such improvement shall become a part of such district. The construction and maintenance of any such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added. The lands assessed for such new improvements, of less than the entire district, shall be designated, alphabetically, "subdistrict _____ of _____ improvement district No. _____." [1917 c 130 § 36; 1913 c 176 § 34; RRS § 4442.]

85.08.560 Extension of existing system—Apportionment of cost. When any extension of or addition to any existing system of improvement shall be thus constructed, the cost thereof shall be assessed to all the

property, counties, cities and towns in the enlarged district benefited thereby in proportion to the benefits received therefrom. Any new lands thus brought into the district shall be assessed in addition a proper and equitable share of the then value of the original system of improvement in proportion to the benefits which such new lands derive therefrom. In determining the value to be so assessed the board of appraisers shall take into consideration the amount, if any, which the property to be assessed has already paid toward the construction of the original system and all other matters that may be pertinent. If at any time it shall appear to the board of supervisors of any drainage or diking improvement district that any lands without the boundaries of such district are being benefited by the improvements of the district and are not being assessed for the benefits received, they shall file a petition with the board of county commissioners praying the benefits received by such lands be determined and an assessment made upon such lands for the benefits so received. Thereupon, the board of county commissioners shall appoint a board of appraisers as provided in RCW 85.08.360 for the apportionment of the cost of construction of the original system of improvement, and an apportionment of the then value of the improvements of the district shall be made to such lands in proportion to the benefits received therefrom as nearly as may be in the manner provided for the apportionment of the cost of the original system of improvement. In determining what share of the value of the improvements of the district shall be apportioned to such lands the board of appraisers shall take into consideration the benefits already received by such lands and all other matters that may be pertinent. The amount of the value of the original system assessed upon any new property brought within the district shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such original system. If the assessment against any land has been paid in full, or if the assessment remaining outstanding against such land is less than the rebate apportioned to such land, the amount so rebated or excess of rebate over assessment shall be paid into the maintenance fund of the district and a proper credit on any existing or future assessment for maintenance shall be entered in favor of the land entitled thereto. The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding unpaid warrants or bonds secured to be paid by such assessments. [1917 c 130 § 37; 1913 c 176 § 35; RRS § 4443.]

85.08.565 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which diking, drainage, or sewerage improvement districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which diking, drainage, or sewerage improvement districts created after July 28, 1985, may

measure and impose special assessments and adopt budgets. [1985 c 396 § 26.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.570 Districts in two or more counties—**Notice**—**Hearings**. When a drainage, diking or sewerage system is proposed which will require a location, or the assessment of lands, in more than one county, application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The lines of such proposed improvement shall be examined by the county engineers of the counties wherein said improvements will lie, jointly. The hearings in regard to such improvements, provided for by RCW *85.08.150, and 85.08.400 through 85.08.430 shall be had by the boards of county commissioners of the two counties in joint sessions, and all other matters required to be done by the county commissioners in regard to such improvement and the improvement district shall be had and done by the boards of county commissioners of the counties wherein such system of improvements shall lie, either in joint session at such place as the said board shall order, or by concurrent order entered into by the said boards at their respective offices. Notice of the hearings shall be given by the auditors of both counties jointly by publication in the official paper of each of said counties. The county engineer of the county wherein the greatest length of drainage, diking or sewerage system will lie, shall have charge of the engineering work and be ex officio a member of the boards in this chapter provided for. The schedule of apportionment shall be prepared in separate parts for the land in the respective counties; and that part of said roll containing the assessments upon the lands in each respective county shall be transmitted to the treasurer thereof, and the treasurer of said county shall give notice of said assessments as provided in RCW 85.08.400 through 85.08.430, and shall collect the assessments therein contained and shall also extend and collect the annual maintenance levies of said district upon the lands of said district lying in his county. The auditor of the county in which the greater length of the drainage, diking or sewerage system shall lie shall act as clerk of the joint session of the boards of county commissioners, and shall issue the warrants of the improvement district, and shall attest the signatures of the two boards of county commissioners on the bonds. He shall furnish to the auditor of the other county duplicate copies of the records of proceedings of such joint sessions. Duplicate records of all proceedings had and papers filed in connection with such improvements shall be kept, one with the auditor of each county. Protests or other papers filed with the auditor who is not clerk of the joint sessions shall be forwarded forthwith by him to the auditor who acts as clerk of such joint sessions. The treasurer of said county shall register and certify and pay the warrants and the bonds, and shall have charge of the funds of the district; and to him, the treasurer of the county in which the lesser portion of such system of improvements lie, shall remit semiannually, in time for the semiannual warrant and bond calls,

all such collections made in such other county. A drainage, diking or sewerage improvement district lying in more than one county shall be designated "joint drainage (or diking) or sewerage improvement district No. ----- of ----- and ----- counties." All proceedings in regard to joint drainage, diking improvement districts, which have heretofore been had and done substantially in accordance with the amendatory provisions of this chapter are hereby approved and declared to be valid. [1923 c 46 § 13; 1921 c 157 § 6; 1913 c 176 § 38; RRS § 4446.]

*Reviser's note: RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

85.08.630 Waters developed—**Defined**—**Disposal of**. The use of any waters developed by the drainage system of any drainage improvement district shall be subject to the control of the drainage improvement district and such district shall have the right to dispose of and contract for the use of such waters for irrigation or other uses, as hereinafter provided: *Provided*, That the waters developed by any existing drainage system, and the waters developed by any drainage system hereafter constructed which shall remain undisposed of for three years after the completion of the improvement and the levy of the assessment to pay the cost thereof, shall not be subject to disposal by such district where such waters shall have been appropriated by any person at a point below the outlet of the drainage system of such district. The term "waters developed" as used in this chapter shall not be held to include surface waste waters from irrigation. [1917 c 130 § 7; RRS § 4455.]

85.08.640 Waters developed—**Contracts for use and sale**. The board of supervisors may enter into any contract for the use, sale or disposal of such waters that in their judgment shall be for the best interests of the district; but no such sale, contract or disposition shall be made except by the unanimous vote of the board. The district shall not guarantee nor warrant the amount or flow of, nor the title to, such waters; and no use, sale or disposition of such waters shall be lawful that will interfere with the efficiency of said drainage system. [1917 c 130 § 8; RRS § 4456.]

85.08.650 Waters developed—**Application for use**. Any person or corporation desiring to acquire and use the waters developed by any drainage system, may make application therefor in writing to the board of supervisors of the district, accompanying such application with a bond to be approved by the board, conditioned that the applicant will pay the costs of the investigation and hearing in case no disposal of said waters be made thereat. Successive applications and proceedings may be made and had as long as there is any water remaining undisposed of in said drainage system. [1917 c 130 § 9; RRS § 4457.]

85.08.660 Waters developed—**Notice of hearing**—**Form of application**—**Bond**. When any such application shall be filed, the board of supervisors of the

district shall cause to be published in the county official paper, once a week for three successive weeks prior to the date of the hearing hereinafter referred to, a notice fixing the time and place within the district when the board will hear and consider such applications. All applications shall be in writing and contain a statement of the proposed use to be made of the water, specifying the time, place and manner of such proposed use; and in entering into any such contract, the board of supervisors of the district may require such security as they may deem reasonable for the proper construction and installation of works of diversion and for the use of said water by the party proposing to use the same. [1917 c 130 § 10; RRS § 4458.]

85.08.670 Prosecuting attorney—Duties. It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this chapter, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this chapter in regard to the proceedings and in the performance of their duties under this chapter, and perform such other duties as in this chapter provided and required. [1913 c 176 § 36; RRS § 4444.]

85.08.680 Rules and regulations. The board of supervisors of each district shall make reasonable rules and regulations whereby any owner of land in the district may make connection for drainage, or sewerage purposes, with any drainage, or sewerage system thereof. They shall also maintain and keep efficient the system of improvement of the district. [1923 c 46 § 12; 1917 c 130 § 38; 1913 c 176 § 37; RRS § 4445.]

85.08.690 Penalty for injury to or interference with improvement. Every person who shall wilfully damage or interfere with the operation of any dikes, drains, ditches or other improvements of any diking or drainage improvement district shall be guilty of a misdemeanor. [1917 c 130 § 11; RRS § 4459.]

85.08.820 Drainage bonds owned by state—Cancellation of interest and assessments—Levy omitted. Whenever the department of conservation and development of the state of Washington shall have purchased and the state of Washington owns the entire issue of any series of bonds of any county in the state, the payment of which is to be made from and is secured by assessments upon the property included within any drainage improvement district organized and existing in such county, and it shall appear to the satisfaction of the director of conservation and development that owing to and by reason of the nature of the soil within and the topography of such drainage improvement district the lands contained therein were not or will not be drained sufficiently to permit the cultivation thereof within the time when assessments for the payment of the interest on said bonds and to constitute a sinking fund to retire said bonds as provided by law became or will become due, and that by reason thereof the owners of said lands

were or will be unable to meet said assessment, the director of conservation and development shall have the power and he is hereby authorized under such terms and conditions as he shall deem advisable to enter into a contract in writing with the board of county commissioners of the county issuing such bonds, waiving the payment of interest upon such bonds from the date of their issue for not to exceed five years, and extending the time of payment of said bonds for not to exceed five years; and upon the execution of said contract the board of county commissioners of said county shall have the power and is hereby authorized to cancel all assessments made upon the lands included within such drainage improvement district for the payment of principal and/or interest on said bonds prior to the date of said contract, and to omit the levy of any assessments for said purposes until the expiration of the time of the waiver of interest payments upon said bonds specified in said contract. [1925 ex.s. c 140 § 1; RRS § 4332-1.]

Reviser's note: Names of department and director of conservation and development changed to department and director of conservation; department and director powers and duties transferred to department of ecology: RCW 43.17.010, 43.17.020; chapter 43.21 RCW.

85.08.830 Merger of improvement district with irrigation district—Authorized. Whenever a drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district within an irrigation district or irrigation districts desires to merge with an irrigation district or irrigation districts in which lands of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district are located, it may petition the board or boards of county commissioners, as the case may be, to do so: *Provided*, That only that portion of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district within a particular irrigation district may merge with the irrigation district within which it is situated. [1957 c 94 § 2.]

Merger of improvement district with irrigation district: RCW 87.03-720-87.03.745.

85.08.840 Merger of improvement district with irrigation district—Jurisdiction to hear, supervise and conduct proceedings—Clerk, notice, records. The boards of county commissioners of the counties in which a joint drainage improvement district is situated shall have jurisdiction in joint session to hear, supervise and conduct the merger proceedings relating to such a district. The auditor of the county in which the greater length of the system of improvements lies shall act as clerk of the joint sessions of the boards of county commissioners, and shall give the notice provided for in RCW 85.08.870. He shall furnish to the auditor of the other county duplicate copies of the records of proceedings of the joint sessions. Duplicate records of all proceedings had and papers filed in connection with the merger of a joint drainage improvement district shall be kept with the auditor of each county. The board of county commissioners of the county in which a drainage

improvement district or consolidated drainage improvement district is situated shall have exclusive jurisdiction to hear, supervise and conduct merger proceedings relating to such districts. [1957 c 94 § 3.]

85.08.850 Merger of improvement district with irrigation district—Petition—Signing—Presentation. The petition requesting the merger shall be signed by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district and presented to the clerk or clerks of the appropriate board or boards of county commissioners, at a regular or special meeting of the board or boards. [1957 c 94 § 4.]

85.08.860 Merger of improvement district with irrigation district—Assent by irrigation district—Election, order, notice. If it appears to the board or boards of county commissioners that all portions of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district will, as a result of the proceedings, be merged with the irrigation district or irrigation districts and that the board or boards of directors of the irrigation district or irrigation districts into which the drainage improvement, joint drainage improvement district, or consolidated drainage improvement district will be merged, which irrigation district or irrigation districts shall be named in the petition, are agreeable to the merger, and that the assent or assents thereto, in writing, by said irrigation district board or boards have been filed with the board or boards of county commissioners, the board or boards of county commissioners shall order an election to be held in the drainage improvement district, joint drainage improvement district or consolidated drainage improvement district to approve or disapprove the merger and shall fix the time thereof and cause notice to be published. [1957 c 94 § 5.]

85.08.870 Merger of improvement district with irrigation district—Notice, contents—Election, ballots. The notice shall be given and the election conducted in the manner, so far as is applicable, as for the election of members of the board of supervisors of a drainage improvement district. The notice shall advise of the election so ordered and the date, time and place thereof, state the filing of the petition, the names of those signing the petition and prayer thereof, and shall require the voters to cast ballots with the words "Merger, Yes" or "Merger, No." [1957 c 94 § 6.]

85.08.880 Merger of improvement district with irrigation district—Proceedings and costs on approval or disapproval. If a majority of the votes cast favor merger, the board or boards of county commissioners shall enter an order approving the petition and ordering the merger and file a certified copy thereof with the county auditor or auditors of the county or counties in which the district is situated, and the drainage improvement district, joint drainage improvement district, or consolidated drainage

improvement district shall thereupon be dissolved and its system of improvements vested in the irrigation district or irrigation districts without further proceedings. If a majority of the votes cast are against merger, the board of commissioners shall enter an order dismissing the proceedings. If the merger is approved, the expenses of the county or counties in connection with the election will be paid by the irrigation district or irrigation districts, with each irrigation district, if there is more than one, paying the same portion of the expenses as that portion of the drainage improvement district, joint drainage improvement district, or consolidated drainage district which is merged into the irrigation district. If the merger is not approved, the expenses of the county or counties in connection with the election will be paid by the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district. [1957 c 94 § 7.]

85.08.890 Merger of improvement district with irrigation district—Prior indebtedness. None of the indebtedness of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district, or of the drainage improvement districts taken into the consolidated drainage improvement district, shall be affected by the merger and dissolution, and all lands liable to be assessed to pay such indebtedness shall remain liable to the same extent as if the merger and dissolution had not taken place, and all assessments theretofore levied shall remain unimpaired and shall be collected in the same manner as if no merger had taken place. The board or boards of directors of the irrigation district or irrigation districts with which the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district was merged shall have all the powers possessed at the time of the merger by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district and the board or boards of county commissioners may levy and cause to be collected any and all assessments against any of the lands formerly within the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district necessary for the payment of all indebtedness thereof, and of the drainage improvement districts taken into the consolidated drainage improvement district. Until the assessments are collected and all indebtedness of each drainage improvement district or joint drainage improvement district included in the merger, either as such or, in the case of the former, as a part of a consolidated drainage improvement district, is paid, separate funds shall be maintained for each such drainage improvement district or joint drainage improvement district as were maintained before the merger. [1957 c 94 § 8.]

85.08.895 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Diking or drainage improvement districts

may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 13.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.08.900 Alternative methods of formation of improvement districts. Whenever an improvement district is sought to be established, in addition to the procedures authorized by this chapter there may be employed any other method authorized by law for the formation of districts or improvement districts so that the improvement district will qualify under the provisions of chapter 89.16 RCW. [1959 c 104 § 6.]

85.08.905 Sewerage improvement districts—Powers. Sewerage improvement districts may investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities to collect, treat, and dispose of sanitary, industrial, and other sewage. Such facilities include on-site and off-site sewerage facilities, including approved septic tanks or septic tank systems. [1985 c 396 § 30.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.910 Sewerage improvement districts located in third class counties become sewer districts. See RCW 56.04.120.

85.08.920 Sewerage improvement districts operating as sewer districts become sewer districts—Procedure. See RCW 56.04.130.

Chapter 85.12

FEDERAL AID TO DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

Sections

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| 85.12.010 | Commissioners may accept federal aid, or contract for work by federal agency—No bond required. |
| 85.12.030 | Disposition of federal aid funds. |

85.12.010 Commissioners may accept federal aid, or contract for work by federal agency—No bond required. Whenever, under the provisions of any act of the congress of the United States, the corps of engineers of the United States army, or any other agency of the United States, shall be authorized to reconstruct, improve, repair or maintain any system of improvements of any diking, drainage or sewerage improvement district under the laws of the state of Washington, the board of county commissioners of the county in which such district is situated, on behalf of such district may consent to and permit the United States, or any agency thereof, to perform any work or service upon or with regard to such

district's system of improvements which shall by the board be found to be for the benefit of such district and the property therein, or, if the enlargement, betterment or other improvement of such district's system of improvements, or the performance of extraordinary maintenance work upon or with respect to its existing system of improvements shall have been authorized, the board may contract, on behalf of said district, upon such terms as may be agreed upon by the United States and the board for the performance of the work so authorized by said corps of engineers, or other agency of the United States. No bond shall be required by the district for any work performed by or under the supervision of said corps of engineers, or other agency of the United States. [1949 c 175 § 1; RRS § 4459–50. Formerly RCW 85.12.010 and 85.12.020.]

85.12.030 Disposition of federal aid funds. If at any time, whether prior or subsequent to the making of any contract authorized by the preceding section, there shall be made available and paid to a district fund appropriated by the congress of the United States to pay the costs and expenses of reconstruction, improvement, repair or maintenance of the district's system of improvements or any part thereof, said funds shall be paid into the district's maintenance or construction fund, according as the work is maintenance or new construction, and thereafter used and disbursed upon the order of the board, provided that if the district shall have theretofore issued extraordinary maintenance warrants or maintenance bonds or construction bonds, said funds shall be used to pay and retire said bonds or warrants to the extent of said funds. When all said warrants or bonds have been paid, the assessment levied to pay said warrants or bonds, or those installments of such assessment not then due and payable, shall be canceled. If the funds made available and paid to the district by the United States shall be more than sufficient to pay and retire all then outstanding warrants or bonds issued to pay the cost of the particular work, whether maintenance or new construction, then the excess of such federal aid funds, up to the amount of the total of the assessments to pay for such work theretofore paid, shall be paid by the treasurer to those who have paid such assessment or assessments in the proportion that the total of all such assessments paid by any one bears to the total of all such assessments theretofore paid, and any balance of such federal aid funds remaining shall become and be part of the maintenance fund of the district. Any assessment or installment of assessment not canceled under the provisions hereof, or any balance thereof which when collected shall not be required for the payment of interest or principal of any of said warrants or bonds, shall, after all said warrants or bonds have been paid, be paid into and become part of the maintenance fund of the district. [1949 c 175 § 2; RRS § 4459–51.]

Chapter 85.15

DIKING, DRAINAGE, SEWERAGE IMPROVEMENT
DISTRICTS—MAINTENANCE AND
EXPANSION—1967 ACT

Sections

85.15.010	Declaration of purpose.
85.15.020	Definitions.
85.15.030	Property roll—Basis and requisites—Separate levies for prior indebtedness.
85.15.040	Public hearing—Notice, publication.
85.15.050	Written objections—Filing—Grounds—Waiver.
85.15.060	Reexamination of properties on roll—Adjustment, periodic revision, of valuations.
85.15.070	Roll constitutes valuations against which levy made and collected—Hearing on adjustments.
85.15.080	Roll and proceedings conclusive—Remedies.
85.15.090	Review by superior court—How taken.
85.15.100	Review by superior court—Transcript—Contents—Filing.
85.15.110	Review by superior court—Filing fees—Bond—Priority of cause.
85.15.120	Review by superior court—Scope—Judgment.
85.15.130	Appeal to supreme court or court of appeals.
85.15.140	Levy is for continuous benefits to protected property.
85.15.150	Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue.
85.15.160	Emergency expenditures—Warrants.
85.15.170	Concurrent use of other methods of raising revenue.

85.15.010 Declaration of purpose. The maintenance, enlargement and extension of diking, drainage and sewerage improvement districts formed under chapter 85.08 RCW is essential to the public welfare and economy of the state. The influx of population and changes in land use since many such districts were formed, has made obsolete, expensive and unjust the method used under existing law to provide funds for the operation of such districts and for the maintenance and expansion of their systems of improvement. [1967 c 184 § 2.]

Severability—1967 c 184: See note following RCW 85.05.610.

85.15.020 Definitions. As used in this chapter:

"District" means a diking, drainage or sewerage improvement district organized under chapter 85.08 RCW.

"Maintenance" means and includes not merely operating expenses and such upkeep and other work commonly classed as maintenance as shall be necessary to restore and preserve the district's systems of improvement and the machinery and equipment operated in connection therewith in the same or as good condition as when originally constructed and installed, but also the making of such changes in and betterments to the original works, improvements and installations as shall, subject to approval of the board of county commissioners, be by the board deemed necessary to put the systems of improvements into such condition as will provide protection and services as contemplated and intended by the original construction and any enlargement and extensions thereof thereafter made. [1967 c 184 § 3.]

85.15.030 Property roll—Basis and requisites—Separate levies for prior indebtedness. To operate under this chapter, the board of commissioners of the improvement district shall cause to be prepared and filed with

the board of county commissioners a property roll. The roll shall contain: (1) A description of all properties benefited and improvements thereon which receive protection and service from the systems of the district with the name of the owner or the reputed owner thereof and his address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located and (2) the determined value of such land and improvements thereon as last assessed and equalized by the assessor of such county or counties. Such assessed and equalized values shall be deemed prima facie to be just, fair and correct valuations against which annual taxes shall be levied for the operation of the district and the maintenance and expansion of its facilities.

If property outside of the limits of the original district are upon the roll as adopted ultimately, and the original district has outstanding bonds or long-term warrants, the board of county commissioners shall set up separate dollar rate levies for the full retirement thereof. [1973 1st ex.s. c 195 § 111; 1967 c 184 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.15.040 Public hearing—Notice, publication. When a property roll is filed with the county legislative authority, the county legislative authority shall hold a public hearing to determine whether the facts and conditions heretofore recited in this chapter as a prerequisite to its application do or do not exist, and shall give notice of hearing as follows:

The notice shall be published at least once a week for three consecutive weeks in a newspaper having general circulation in the area involved. The last publication shall be more than fifteen days prior to date of hearing. [1985 c 469 § 75; 1967 c 184 § 5.]

85.15.050 Written objections—Filing—Grounds—Waiver. Any person, owner or reputed owner having any interest in any property against which the board of county commissioners seeks to make a protection and service charge under this chapter, may object thereto. All such objections must be in writing and filed with the board of county commissioners before the hearing is commenced upon the roll containing such properties and must state clearly the grounds of such objection. Objections not made within this time and in this manner shall be deemed conclusively to have been waived. [1967 c 184 § 6.]

85.15.060 Reexamination of properties on roll—Adjustment, periodic revision, of valuations. The board of county commissioners may at any time reexamine the properties on any roll, and upon receipt of a petition from the board of supervisors of the district or the written request of a property owner shall do so. If it is found that the condition of such property or properties has changed so that such property should be eliminated from any rolls on file, or the valuation against which dollar rate is levied should be lowered, it shall so determine and enter an order adjusting the valuation as to such properties and shall certify and file a copy thereof with

the treasurer of the county wherein the property is situated, and the treasurer shall alter and change the existing rolls accordingly. Valuations may be revised periodically to reflect changes in real property valuations by the county assessor. [1973 1st ex.s. c 195 § 112; 1967 c 184 § 7.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.15.070 Roll constitutes valuations against which levy made and collected—Hearing on adjustments. The roll approved and certified to the county officers by the board of county commissioners as in this chapter provided shall constitute the valuations of land, buildings and improvements furnished protection and services by the systems of the district against which valuation taxes shall be levied and collected annually in the same manner as general taxes for the continuing operations of the district and its systems. The valuations on said roll shall be subject to adjustment from time to time in the manner provided in RCW 85.15.060.

The board of county commissioners shall hold a hearing on such adjustments at the county seat at the time of equalization of real property assessments for the purpose of considering written objections to any revision of valuations filed at least ten days prior to the hearing and shall give published notice only of such hearing as provided in RCW 85.15.040. [1973 1st ex.s. c 195 § 113; 1967 c 184 § 8.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.15.080 Roll and proceedings conclusive—Remedies. Wherever any roll shall have been adopted by the board of county commissioners, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties, and it cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to the roll as provided in RCW 85.15.050 and appealing from the action of said board in confirming the roll in the manner and within the time in this chapter provided. No proceeding of any kind, except proceedings had throughout the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained, for the purpose of defeating or contesting any assessment or charge made through levies under this chapter, or the sale of any property to pay such charges: *Provided*, That suit in injunction may be brought to prevent collection of charges of assessments or sale of property thereunder upon the following grounds and no other:

- (1) That the property charged or about to be sold does not appear upon the district roll, or
- (2) The charge has been paid. [1967 c 184 § 9.]

85.15.090 Review by superior court—How taken. The decision of the board of county commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon

appeal thereto taken in the following manner: Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the county treasurer. The petition shall describe the property in question, shall set forth the written objections which were made to the decision, and the date of filing of such objections, and shall be signed by such party or someone in his behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this chapter. [1967 c 184 § 10.]

85.15.100 Review by superior court—Transcript—Contents—Filing. Within ten days from the filing of such petition for review, the county treasurer, unless the court shall grant additional time, shall file with the clerk of the superior court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the person reviewing before the roll was adopted, and a copy of the resolution adopting the roll. [1967 c 184 § 11.]

85.15.110 Review by superior court—Filing fees—Bond—Priority of cause. The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such a petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of the court, conditioned upon his prosecuting his appeal without delay and to guarantee all costs which may be assessed against him by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set the cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. The cause shall have preference over all civil actions pending in the court except eminent domain and forcible entry and detainer proceedings. [1967 c 184 § 12.]

85.15.120 Review by superior court—Scope—Judgment. At the trial the court shall determine whether the board of county commissioners has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the finding of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a certified copy thereof shall be filed with the county treasurer, who shall change, modify, or correct the roll as and if required by the judgment. [1967 c 184 § 13.]

85.15.130 Appeal to supreme court or court of appeals. An appeal shall lie to the supreme court or the court of appeals from the superior court as in other civil cases: *Provided*, That such appeal must be taken within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of

appeals may change, conform, correct, or modify the values of the property in question as shown upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county treasurer having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such judgment as and if required. [1971 c 81 § 163; 1967 c 184 § 14.]

85.15.140 Levy is for continuous benefits to protected property. The dollar rate levies collected from time to time under this chapter are solely assessments for benefits received continuously by the protected properties, calculated in the manner specified in this chapter as a just and equitable way for all protected property to share the expense of such required protection and services. [1973 1st ex.s. c 195 § 114; 1967 c 184 § 15.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.15.150 Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue. The board of any improvement district proceeding under this chapter shall, on or before the first day of September of each year, make an estimate of the costs reasonably anticipated to be required for the effective functioning of the district during the ensuing year and until further revenue therefor can be made available, and shall cause its chairman or secretary to file the same with the board of county commissioners of the county containing the district and other benefited area. The board of county commissioners shall, on or before the first Monday in October next ensuing, certify the amount of the district's estimate, or such amount as it shall deem advisable, to the county treasurer. The amount so certified shall be applied by the regular taxing agencies against the benefit valuation of lands, buildings and improvements as shown by the then current complete roll of such properties certified to and filed with such county treasurer by the board of county commissioners. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of the district. [1967 c 184 § 16.]

85.15.160 Emergency expenditures—Warrants. In the case of an emergency or disaster occurring after the time of making the annual estimate of costs, declared to be such by resolution of the board, the board of the district may incur additional obligations and issue valid warrants therefor in excess of such estimate, in the

manner provided by law for issuance of warrants by districts and the servicing thereof. All such warrants so issued shall be valid and legal obligations of the district and its taxable lands and improvements as shown upon the then current roll of the district filed with the county treasurer. [1967 c 184 § 17.]

85.15.170 Concurrent use of other methods of raising revenue. Any diking, drainage, or sewerage improvement district operating under this chapter shall not use concurrently the processes provided for raising revenue for maintenance purposes under any other law: *Provided*, That any other method of raising such revenue provided by law may be used concurrently for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedures of this chapter, and no funds raised hereunder shall be used to pay such prior indebtedness. [1967 c 184 § 18.]

Chapter 85.16

MAINTENANCE COSTS AND LEVIES—DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

Sections

85.16.010	Definitions.
85.16.020	Maintenance estimate and levy.
85.16.030	Excess expenditures.
85.16.060	Determination of special benefits—Hearing.
85.16.070	Notice of hearing.
85.16.080	Appraisal of special benefits.
85.16.090	Factors to be considered in making appraisal—Report and schedule.
85.16.110	Separate appraisals and schedules for diking and drainage benefits.
85.16.115	Determining special benefit to portion of lot, tract, or parcel.
85.16.120	Apportionment of levy for extraordinary expenditures—Appraisal and hearing.
85.16.130	Conduct of hearing on appraisers' report—Correction, etc., of schedules.
85.16.150	Approval of schedules—Separate funds for diking, drainage systems.
85.16.160	Roll of benefits—Benefits to be basis of levies.
85.16.170	Levy for extraordinary expenditures—Roll.
85.16.180	Authorizing extraordinary work—Temporary construction warrants.
85.16.190	Appeals—Regularity, validity of proceedings.
85.16.200	Redetermination of special benefits—Hearing.
85.16.210	Conduct of hearing on special benefits—Modification of schedules—Appeal.
85.16.220	Other provisions shall apply—Exceptions.
85.16.230	Erroneous assessment—Correction.
85.16.900	Severability—1949 c 26.

85.16.010 Definitions. As used in this chapter:

- (1) "Appraisers" means the board of appraisers;
- (2) "supervisors" means the district board of supervisors;
- (3) "board" means the board of county commissioners;
- (4) "auditor" means the county auditor;
- (5) "treasurer" means the county treasurer; and
- (6) "maintenance", "maintenance of the system of improvements", "maintenance work", and other terms of similar import, mean and include not merely operating

expenses and such upkeep and other work commonly classed as maintenance as shall be necessary to restore and preserve the district's system of improvement and the machinery and equipment operated in connection therewith in the same or as good condition as when originally constructed and installed, but also: (a) The making of such changes in and betterments to the original works, improvements and installations as shall, subject to the approval of the board, be by the supervisors deemed necessary to put the system of improvements into such condition that it shall provide adequate drainage and protection from overflow for the lands within the district as contemplated and intended by the original construction and any enlargement and extension thereof thereafter made; and (b) all costs and expenses incident to any determination or redetermination of benefits and apportionment of costs made under the terms of this chapter. [1949 c 26 § 1; Rem. Supp. 1949 § 4459–20.]

85.16.020 Maintenance estimate and levy. On or before the first Monday in September in each year the supervisors of each diking, drainage or sewerage improvement district shall make and file with the board of the county containing such district, a statement and estimate in writing of the amount required for the maintenance of the system of improvements of said district for the ensuing fiscal year. The board shall, on or before the first Monday in October next ensuing, levy assessments for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the state, the county containing such district, and the cities, towns and other municipal corporations within such district in respect of all highways, roads and streets and other lands, improvements, and facilities chargeable therewith owned by them respectively within such district. Said assessments shall be levied in the same proportion as the assessments to pay the original cost of construction of said system of improvements: *Provided however*, That when a determination or redetermination of benefits accruing to the properties within the district from the maintenance of the district's system of improvements or from the maintenance of the district's diking system and drainage system separately shall have been made, as hereinafter in this chapter provided, then the assessments for maintenance shall be levied in proportion to the benefits accruing to each piece or parcel of property and improvements benefited according to the latest determination of such benefits. Each such levy as made shall be certified by the auditor to the treasurer, who shall extend the same upon the district assessment roll. [1949 c 26 § 2; Rem. Supp. 1949 § 4459–21.]

85.16.030 Excess expenditures. In maintaining a system of improvements of any such district the supervisors thereof may at any time, with the approval of the county legislative authority and upon determination by such county legislative authority that an emergency exists, make expenditures in excess of the last annual maintenance assessments theretofore made, which excess amount or amounts shall in such event be included in

the maintenance assessments for the succeeding year except as otherwise herein provided. [1986 c 278 § 33; 1983 c 167 § 197; 1949 c 26 § 3; Rem. Supp. 1949 § 4459–22. Formerly RCW 85.16.030, 85.16.040, part and 85.16.050.]

Severability—1986 c 278: See note following RCW 36.01.010.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

85.16.060 Determination of special benefits—Hearing. At any time and from time to time, after completion of the original construction of any such district's system of improvements or after the completion of any alteration, reduction, enlargement, addition to, or other improvement of the system not constituting maintenance, as herein defined, the board may upon their own initiative, or upon petition filed by at least ten percent of the total number of owners of property within the district subject to assessments for maintenance, as shown by the latest assessment roll of the district shall, fix a date for and hold a hearing at the county seat for the purpose of determining or redetermining the special benefits accruing from the maintenance of the district's system of improvements to all property benefited thereby. [1961 c 16 § 2. Prior: 1951 c 63 § 1; 1949 c 26 § 4, part; Rem. Supp. 1949 § 4459–23, part.]

85.16.070 Notice of hearing. Notice of the hearing shall be given by publication in the official county newspaper and in such other newspaper published in or near the district as the county legislative authority may in its discretion direct, once a week for two consecutive weeks, the last publication of which shall be not less than seven nor more than fourteen days before the date of the hearing. Also, the county legislative authority shall serve by mail, at least ten days before the hearing, upon the commissioner of public lands of the state two copies of the published notice of the hearing together with a statement showing the amount of benefits determined by the appraisers in respect of each parcel of state, school, granted, or other lands owned by the state in the district, and shall similarly serve notice of the hearing upon the secretary of transportation, with a statement showing the amount of benefits determined by the appraisers in respect of any state primary or secondary highways within the district. [1984 c 7 § 378; 1949 c 26 § 6; Rem. Supp. 1949 § 4459–25.]

Reviser's note: The powers and duties of the commissioner of public lands have been transferred to the department of natural resources; see 1957 c 38 §§ 1, 13; RCW 43.30.010, 43.30.130.

Severability—1984 c 7: See note following RCW 47.01.141.

85.16.080 Appraisal of special benefits. At or within two weeks of the time of fixing the date for such hearing the board shall appoint three qualified appraisers, at least one of whom shall be a resident of the county in which said district is situated, who shall qualify as provided in RCW 85.08.360. Thereupon said appraisers shall proceed immediately to carefully examine the district's system of improvements and the public and private property within the district, and fairly, justly and

equitably determine and apportion the special benefits which will accrue from the maintenance of the district's system of improvements to each piece or parcel of privately and publicly owned land, together with the buildings and other permanent improvements thereon, and to the state, county, cities, towns and other municipal corporations for their roads and streets and other property within the district. The fact that any such property shall be exempt from general taxes shall not exempt the same from the provisions hereof. [1961 c 16 § 3. Prior: 1949 c 26 § 4, part; Rem. Supp. 1949 § 4459-23, part.]

85.16.090 Factors to be considered in making appraisal—Report and schedule. The appraisers shall carefully consider and take into account all factors, situations and conditions which lawfully may be taken into consideration as bearing upon and determining such benefits and to that end may make such investigations, hold such hearings, and receive such evidence as they may deem proper and shall file their sworn report, with a complete schedule of all property within the district and the special benefits determined by them as accruing to each piece and parcel thereof, not less than twenty days prior to the date fixed for the hearing by the board. [1949 c 26 § 5; Rem. Supp. 1949 § 4459-24. Formerly RCW 85.16.090 and 85.16.100.]

85.16.110 Separate appraisals and schedules for diking and drainage benefits. In a district which functions both as a diking and a drainage improvement district, the appraisers, if so directed in the order of the board appointing them, shall determine separately, in accordance with RCW 85.16.060 and 85.16.080, the special benefits accruing to the various properties within the district from the maintenance of the diking system and from the maintenance of the drainage system, and in such case their report shall contain separate schedules of the respective benefits accruing from the maintenance of the diking and drainage systems of improvement considered separately and, so far as may be, independently of each other. [1961 c 16 § 4; 1949 c 26 § 7; Rem. Supp. 1949 § 4459-26.]

85.16.115 Determining special benefit to portion of lot, tract, or parcel. When any person applies to the county treasurer to pay the diking, drainage or sewerage improvement district assessments upon a portion of a lot, tract or parcel upon which special benefits have been confirmed, the county treasurer shall refer such matter to the county engineer for investigation. The county engineer shall apportion the total benefits found as to such lot, tract or parcel between the portions thereof in such manner as may be fair, just and equitable taking into account all factors, situations and conditions which may be lawfully taken into consideration in determining such special benefits. Unless the several owners interested in said lot, tract or parcel assent to the apportionment so made, the county engineer shall give notice to the apportionment by mail to them, if known. Upon assent of the interested owners or after the expiration of five days from the date of notice without the filing of a written

protest to the apportionment, the county engineer shall certify in writing the apportioned benefit valuations to the county treasurer. The county treasurer, upon receipt of such certification, shall accept payment and issue receipt on the certified apportionment. If a written protest to such apportionment is filed with the county treasurer, the matter shall be heard by the county commissioners at their next regular session for final apportionment and the county treasurer shall accept and receipt for such assessments as determined and ordered by the county commissioners. [1951 c 63 § 4.]

County road engineer: Chapter 36.80 RCW.

District engineer: RCW 85.08.010.

85.16.120 Apportionment of levy for extraordinary expenditures—Appraisal and hearing. Whenever the board shall provide that a levy to meet extraordinary maintenance expenditures shall be spread over a term of years and warrants or bonds issued as provided in RCW 85.16.030, said board shall fix a date for and hold a hearing and appoint appraisers as provided in RCW 85.16.060 and 85.16.080. Said appraisers, in addition to discharging the duties imposed upon the appraisers by RCW 85.16.060, 85.16.080 and 85.16.090, shall: (1) Apportion the estimated costs of such extraordinary maintenance work to the properties within the district in proportion to the benefits accruing to said properties from the maintenance of the district's system of improvements as determined by them; and (2) file a complete schedule of said apportionment of costs with the board. [1961 c 16 § 5; 1949 c 26 § 8; Rem. Supp. 1949 § 4459-27.]

85.16.130 Conduct of hearing on appraisers' report—Correction, etc., of schedules. At the hearing upon the report of the appraisers, which may be adjourned from time to time until finally completed, the board shall carefully examine and consider the special benefits and the apportionment of estimated costs determined by the appraisers and reported in the schedule or schedules, and any objections thereto which shall have been made in writing and filed with the board on or prior to ten o'clock a.m. of the date fixed for such hearing. Each objector shall be given reasonable time and opportunity to submit evidence and be heard on the merits of his objections. At the conclusion of such hearing, the board shall so correct, revise, raise, lower, change or modify such schedule or schedules, or any part thereof, or strike therefrom any property not specially benefited, as to said board shall appear equitable and just. The board shall cause the clerk of the board to enter on each such schedule or schedules all such additions, cancellations, changes and modifications made by it. [1949 c 26 § 9; Rem. Supp. 1949 § 4459-28. Formerly RCW 85.16.130 and 85.16.140.]

85.16.150 Approval of schedules—Separate funds for diking, drainage systems. When the board shall have determined that the schedule or schedules of benefits and/or apportionment of costs as filed or as changed

and modified by it are fair, just and equitable and, if estimated costs have been apportioned, that said benefits equal or exceed said costs apportioned, the members of the board approving the same shall sign said schedule or schedules and cause the clerk of the board to attest their signatures under his seal, and shall enter an order in the journal approving and confirming the final determination of such benefits and apportionment of costs and all proceedings leading thereto and in connection therewith. If separate schedules be established for maintenance of the diking system and of the drainage system, the board shall by order establish two separate maintenance funds, one for the maintenance of the diking system and one for the maintenance of the drainage system. [1949 c 26 § 10; Rem. Supp. 1949 § 4459-29.]

85.16.160 Roll of benefits—Benefits to be basis of levies. Upon the approval and final determination of benefits the auditor shall immediately prepare a completed roll thereof, which shall contain a copy of the order of the board approving and confirming said benefits as finally determined, and shall deliver said roll to the treasurer. Said benefits shall be the basis for the apportionment and collection of maintenance levies thereafter made by the board. [1949 c 26 § 11; Rem. Supp. 1949 § 4459-30.]

85.16.170 Levy for extraordinary expenditures—Roll. Upon the approval and final determination of the apportionment of estimated costs of extraordinary maintenance expenditures as provided in RCW 85.16.120 and 85.16.130, the board shall levy the amounts so apportioned against all the properties benefited and the amounts assessed against the state, county, cities and towns, and other municipal corporations benefited, and the auditor shall immediately prepare a completed roll thereof, which shall contain a copy of the order of the board approving and confirming said apportionment of estimated costs as finally determined and fixing and levying the assessments therefor, and shall deliver said roll to the treasurer for collection in accordance with the order of the board. [1949 c 26 § 12; Rem. Supp. 1949 § 4459-31.]

85.16.180 Authorizing extraordinary work—Temporary construction warrants. The county legislative authority shall thereupon enter an order authorizing the contemplated extraordinary maintenance work to be done and authorizing the issuance of temporary construction warrants to pay the cost of said work as it progresses, which warrants may bear interest at such rate or rates of interest as the county legislative authority shall determine. Warrants to pay the costs of such extraordinary maintenance may be issued and sold at one time or from time to time and in such series and amounts as may be found practicable and as determined by the board. [1986 c 278 § 34; 1983 c 167 § 198; 1970 ex.s. c 56 § 92; 1969 ex.s. c 232 § 54; 1949 c 26 § 13; Rem. Supp. 1949 § 4459-32. Formerly RCW 85.16.040 and 85.16.180.]

Severability—1986 c 278: See note following RCW 36.01.010.

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

85.16.190 Appeals—Regularity, validity of proceedings. The decision of the board upon any objections to the determination of benefits and/or apportionment of costs and/or the levy of the assessments therefor, made within the time and in the manner prescribed in RCW 85.16.130, may be reviewed by appeal to the superior court of the county in which the district is situated and thereafter to the supreme court or the court of appeals within the time and in the manner and upon the conditions, so far as applicable, provided in RCW 85-08.440, with respect to appeals from the board's apportionment of the cost of construction of the district's system of improvements. The provisions of RCW 85.08-450, shall be controlling as to the regularity, validity, and conclusiveness of all the proceedings hereunder. [1971 c 81 § 164; 1949 c 26 § 14; Rem. Supp. 1949 § 4459-33.]

85.16.200 Redetermination of special benefits—Hearing. Whenever, after the determination of special benefits accruing from the maintenance of the district's system of improvements, it appears to the board from a petition filed by the affected property owner or owners or otherwise, that by reason of permanent improvements or additions made, removed, abandoned or destroyed by fire or other casualty, or of other changes in the character or condition of the property, the benefits theretofore determined in respect to any one or more pieces or parcels of property are no longer fair, just and equitable, then the board shall appoint three appraisers who shall qualify as in RCW 85.08.360 hereof. Said appraisers shall proceed immediately to carefully examine the pieces or parcels of property as to which since the last determination of special benefits thereto there have been permanent improvements or additions made, removed, abandoned or destroyed by fire or other casualty or other changes in the character or condition of the property. Said appraisers shall file their sworn report with the board setting forth the special benefits determined by them as accruing to each piece and parcel of property examined by them not less than ten days prior to the date of hearing. The board shall hold a hearing thereon at the county seat at the time of equalization of the real property assessment and shall give notice thereof as provided in RCW 85.16.070. [1951 c 63 § 2; 1949 c 26 § 15; Rem. Supp. 1949 § 4459-34.]

85.16.210 Conduct of hearing on special benefits—Modification of schedules—Appeal. At such hearing, which may be adjourned from time to time as may be necessary to give all persons interested or affected a reasonable opportunity to be heard, and after consideration of all evidence offered and all factors, situations and conditions bearing upon or determinative of the benefits accruing and to accrue to such pieces or parcels of property, the board shall correct, revise, raise, lower, or

otherwise change or confirm the benefits as theretofore determined, in respect of such pieces or parcels of property, as to it shall seem fair, just and equitable under the circumstances, and thereafter such proceedings shall be had with respect to the confirmation or determination of the benefits and making and filing of a roll thereof, as are in RCW 85.16.130, 85.16.150 and 85.16.160 provided. Any property owner affected by any change thus made in the determination of benefits accruing to his property who shall have appeared at the hearing by the board and made written objections thereto as provided in RCW 85.16.130, may appeal from the action of the board to the superior court and thence to the supreme court or the court of appeals, within the time, in the manner and upon the conditions, so far as applicable, provided in RCW 85.08.440, with respect to appeals from the order of the board confirming the apportionment of the original cost of construction. [1971 c 81 § 165; 1949 c 26 § 16; Rem. Supp. 1949 § 4459–35.]

85.16.220 Other provisions shall apply—Exceptions. The provisions of *RCW 85.08.280, 85.08.310, 85.08.320, 85.08.420, 85.08.430, and 85.08.480 through 85.08.520, shall be deemed and hereby are made a part of this chapter insofar as they may be applicable hereto, except that the unpaid assessments or installments thereof, which may have been levied for extraordinary maintenance costs as provided in RCW 85.16.170, shall bear interest at a rate determined by the county legislative authority. [1981 c 156 § 25; 1949 c 26 § 17; Rem. Supp. 1949 § 4459–36.]

*Reviser's note: RCW 85.08.280 was repealed by 1986 c 278 § 46.

85.16.230 Erroneous assessment—Correction. Whenever any payer of a diking, drainage, or sewerage improvement district maintenance assessment believes that, through obvious error in name, number, description, amount of benefit valuation, double assessment, or extension, or other obvious error, property on which he has paid an assessment has been erroneously assessed, he may pay such assessment under protest. If, within thirty days after such payment under protest, he files with the board a written verified petition setting out his name, address and legal description of the property, the nature of the obvious error alleged to have been made, and the date and amount of any assessment paid thereon, the board shall cause such claim to be investigated. If upon investigation any assessment is found to be erroneous through obvious error, the board shall order such assessment to be corrected if no bond or long term warrant issue is affected. Where correction is ordered of an erroneous assessment already collected, the auditor, upon receipt of a certified copy of the board's order of correction, shall refund to the person paying the assessment the difference between the correct assessment and the erroneous assessment, plus legal interest on such difference from date of payment, by a warrant drawn on the maintenance fund of the district. [1951 c 63 § 3.]

85.16.900 Severability—1949 c 26. The adjudication of invalidity of any section, clause or part of a section of this act shall not impair or otherwise affect the validity of this act as a whole, or any other part hereof. [1949 c 26 § 19.]

Chapter 85.18

LEVY FOR CONTINUOUS BENEFITS—DIKING DISTRICTS

Sections	
85.18.005	Declaration of purpose.
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85.18.160	Annual estimate of costs—Levy as part of general taxes.
85.18.170	Emergency expenditures—Warrants.
85.18.180	Levy is exclusive method for raising revenue—Exception.
85.18.900	Severability—1951 c 45.

85.18.005 Declaration of purpose. The state declares that it has an interest in protecting and preserving productive land and buildings needed to make business function continuously. Where organized diking districts, through their improvements, have reclaimed land or protected it from overflow and have enabled erection of improvements thereon or have furnished such land and buildings protection against flood water, it is necessary to provide a just and equitable method to enable such diking districts continuously to function effectively. It is declared that there is a direct relationship, where such conditions exist, between the continuous functioning of such districts and the fair value of the lands and buildings thereon, or to be erected thereon, thus afforded protection. [1951 c 45 § 1.]

85.18.010 Levy for continuous benefits authorized—Base benefits. When any diking district has been organized and the improvements made afford protection to land and buildings within such district against damage or destruction from overflow waters in that the level of the land and of the foundational structures of buildings thereon is below the water level at flood or high tide stages of the waters, fresh or salt, against which such district improvements furnished protection, the board of diking commissioners of such district may,

under the procedure established in this chapter, determine such fact and by resolution so declare; and may provide that the cost of continued functioning of the district shall be paid through levies of dollar rates made and collected according to this chapter against the land and buildings thus protected, based upon the determined base benefits received by such land and buildings. [1973 1st ex.s. c 195 § 115; 1951 c 45 § 2.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.18.020 Roll of protected property. To operate under this chapter, the board shall cause to be prepared and filed with it a roll containing descriptions of the land and buildings thereon within the district to which its improvements furnish the nature of protection set forth in RCW 85.18.010. The roll shall show descriptions of the land and the name of its owner, or reputed owner, and such owner's address, as shown upon the tax roll of the treasurer of the county wherein the property is located, and the determined value of such land and any buildings thereon as last assessed and equalized by the taxing agencies of such county. [1951 c 45 § 3.]

85.18.030 Hearing on roll—Determining continuous base benefit. After the roll is prepared the board shall give notice of a time and place at which the board will hold a public hearing to determine whether the facts and conditions heretofore recited in this chapter as a prerequisite to its application do or do not exist, and if so found to exist by said board at said hearing, then the board shall by resolution so declare. The notice shall also state that at said hearing, or any continuance thereof, the board will sit to consider said roll and to determine the continuous base benefits which each of the properties thereon are receiving and will receive from the continued operation and functioning of such district, which shall in no instance exceed one hundred percent of the true and fair value of such property in money, will consider all objections made thereto or to any part thereof, and will correct, revise, lower, change, or modify such roll as shall appear just and equitable; that when correct benefits are fixed upon said roll by said board, it will adopt said roll by resolution as establishing, until modified as hereinafter provided, the continuous base benefit to said protected lands and buildings against which will be levied and collected dollar rates to provide funds for the continuous functioning of said district. [1973 1st ex.s. c 195 § 116; 1951 c 45 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.18.040 Notice of hearing. The notice of the time and place of hearing shall be given to any owner, or reputed owner, of the property which is listed on the roll as aforesaid, by mailing a copy thereof at least thirty days before the date fixed for the hearing to the owner or owners at his or their address as shown on the tax rolls of the county treasurer for the property described. In addition thereto, the notice shall be published at least once a week for three consecutive weeks in a newspaper

of general circulation in the district. At least fifteen days must elapse between the last date of publication thereof and the date fixed for the hearing. [1985 c 469 § 76; 1951 c 45 § 5.]

85.18.050 Procedure on hearing—Objections. At said hearing, or adjournments thereof, the board shall review said roll and determine the continuous base benefits to land and buildings furnished continuous protection by the improvement system of the district; hear objections to the adoption of said roll; correct, revise, change, modify or set aside such roll, or any part thereof, as to the board shall appear equitable and just; and then adopt the same by resolution. All objections to this or any subsequent roll must be in writing and filed with the board during the hearing before the roll is adopted and must state clearly the grounds of objection. Objections not made within the time and in the manner herein prescribed shall be conclusively presumed to have been waived. [1951 c 45 § 6.]

85.18.060 Additional roll as to particular property—Procedure. The board shall, from time to time, examine the properties within said district, and if it finds that any protected land or buildings thereon have been omitted from the existing roll, or new buildings have been added to lands, or the condition of land or buildings has changed, and in the initial judgment of the board such land or the buildings thereon was such that it was furnished the protective benefits of the improvements of the district, the board shall cause at each such time an additional roll of such property to be filed with it, and hold a hearing to determine and make such corrections, additions, alterations and modifications of the benefits to such property only, and to hear any objections filed as to such property only. The board shall give notice of such hearing to the owner, or reputed owner, of the property involved, at the address of such owner as then shown on the tax rolls of the treasurer of the county wherein the property is located, in the same way and manner as herein provided for consideration of the original roll, but such notice need not be published.

At the hearing, or any adjournment thereof, the board shall have power to correct, revise, change, modify, or set aside such roll, or any part thereof, as shall be deemed just and equitable, and then adopt the same by resolution. [1951 c 45 § 7.]

85.18.070 Roll to be certified and filed. When any roll or additional or supplemental roll be adopted by the board of commissioners, the same shall be certified to, and filed with, the auditor of the county wherein the property contained on said roll is situated, and shall supplement said original roll. [1951 c 45 § 8.]

85.18.080 Roll to provide basis for levy. Until further modified, amended, or changed by an additional or supplemental roll certified to the county auditor after the foregoing procedure is had, the original roll, as modified or supplemented, if the same is done, shall serve as the base of benefits to the land and buildings protected by

the improvement system of said district against which dollar rate is levied and collected from time to time for the continued functioning of said diking district. [1973 1st ex.s. c 195 § 117; 1951 c 45 § 9.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.18.090 Roll and proceedings conclusive—Exceptions—Right to injunction. Whenever any roll shall have been adopted by the board of commissioners, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties, and it cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll as provided in RCW 85.18.050 and appealing from the action of the board in confirming such roll in the manner and within the time in this chapter provided. No proceeding of any kind, except proceedings had through the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained, for the purpose of defeating or contesting any assessment or charge made through levies under this chapter, or the sale of any property to pay such charges: *Provided, however,* That suit in injunction may be brought to prevent collection of charges of assessments or sale of property thereunder upon the following grounds and no other:

(1) That the property charged or about to be sold does not appear upon the district roll filed with the county auditor, or

(2) The charge has been paid. [1951 c 45 § 10.]

85.18.100 Review by superior court—How taken. The decision of the board of commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon appeal thereto taken in the following manner: Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the commissioners. The petition shall describe the property in question, set forth the written objections which were made to the decision, the date of filing of such objections, and be signed by such party or one in his behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this chapter. [1951 c 45 § 11.]

85.18.110 Review by superior court—Transcript—Contents—Filing. Within ten days from the filing of such petition for review, the commission, unless the court shall grant additional time, shall file with the clerk of such court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the person reviewing before said roll was adopted, and a copy of the resolution adopting the roll. [1951 c 45 § 12.]

85.18.120 Review by superior court—Filing fee—Bond—Priority of cause. The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned upon his prosecuting his appeal without delay and to guarantee all costs which may be assessed against him by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set said cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. Said cause shall have preference over all civil actions pending in said court except eminent domain and forcible entry and detainer proceedings. [1951 c 45 § 13.]

85.18.130 Review by superior court—Scope—Judgment. At the trial the court shall determine whether the board has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the finding of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a certified copy thereof shall be filed with the county auditor, who shall change, modify or correct as and if required. [1951 c 45 § 14.]

85.18.140 Appeal to supreme court or court of appeals. An appeal shall lie to the supreme court or the court of appeals from the superior court as in other civil cases: *Provided, however,* That such appeal must be taken within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of appeals, on such appeal, may change, confirm, correct or modify the values of the property in question as shown upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county auditor having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such decision if required. [1971 c 81 § 166; 1951 c 45 § 15.]

85.18.150 Levy is for continuous benefits only. The dollar rate levy returns collected from time to time under this chapter are solely assessments for benefits received continuously by the protected properties, calculated in the manner specified in this chapter as a just and equitable way for all protected property to share the expense of such required protection. [1973 1st ex.s. c 195 § 118; 1951 c 45 § 16.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.18.160 Annual estimate of costs—Levy as part of general taxes. The board of commissioners of any diking district proceeding under this chapter shall, on or before the first day of November of each year, make an

estimate of the costs reasonably anticipated to be required for the effective functioning of such district during the ensuing year and until further revenue therefor can be made available, and cause its chairman or secretary to certify the same on or before said date to the county auditor, and the amount so certified shall be levied by the regular taxing agencies against the base benefits to the lands and buildings within such district as shown by the then current complete roll of such properties and the determined benefits thereto as therefore certified to and filed with such county auditor by the commissioners of such district. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of such district. [1951 c 45 § 17.]

85.18.170 Emergency expenditures—Warrants. In the case of an emergency or disaster not in contemplation at the time of making the annual estimate of costs, declared to be such by resolution of such board, the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, in the manner provided by law for issuance of warrants by diking districts and the servicing thereof, and all such warrants so issued shall be valid and legal obligations of such district and its taxable lands and improvements as shown upon the then current roll of said district filed with the county auditor. [1951 c 45 § 18.]

85.18.180 Levy is exclusive method for raising revenue—Exception. Any diking district operating under this chapter shall not use the processes provided for raising revenue under any other law: *Provided*, That any such other method of raising revenue provided by law may be used concurrently for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedure of this chapter, and no funds raised hereunder shall be used to pay such prior indebtedness. [1951 c 45 § 19.]

85.18.900 Severability—1951 c 45. Should any section or provision of this act be declared unconstitutional or ineffectual, such action shall not affect or nullify any other provision or section thereof. [1951 c 45 § 20.]

Chapter 85.20

REORGANIZATION OF DISTRICTS INTO IMPROVEMENT DISTRICTS—1917 ACT

Sections

- 85.20.010 Reorganization authorized.
85.20.020 Petition to reorganize—Contents.

- 85.20.030 Elections—Notice—Publication—Costs.
85.20.050 Reorganized district—Board—Indebtedness not affected.
85.20.070 Refunding bonds.
85.20.120 Sale and issuance of refunding bonds.
85.20.140 Powers of board.
85.20.150 Extensions to compensate for inadequate benefits—Payment.

85.20.010 Reorganization authorized. Any drainage district or diking district organized under the provisions of chapter 115 or chapter 117 of the Laws of 1895, and the acts amendatory thereof, may be reorganized as a drainage improvement district or a diking improvement district, upon proceedings had in accordance with the provisions of this chapter. [1917 c 131 § 1; RRS § 4347. FORMER PART OF SECTION: 1933 c 182 § 1, now codified as RCW 85.22.010.]

Reviser's note: Chapter 115, Laws of 1895 referred to herein is the basic diking district act codified as chapter 85.06 RCW, Part I, and chapter 117, Laws of 1895 is the basic drainage district act codified as chapter 85.05 RCW.

85.20.020 Petition to reorganize—Contents. For the purpose of securing such reorganization, a petition shall be presented to the clerk of the board of county commissioners of the county in which such district is located, at a regular or special meeting of the board. The petition shall be signed by the board of commissioners of the district and shall state the number of the district seeking to reorganize, and shall pray that such district be reorganized as a drainage or a diking improvement district. [1917 c 131 § 2; RRS § 4348. FORMER PART OF SECTION: 1933 c 182 § 2 now codified as RCW 85.22.020.]

85.20.030 Elections—Notice—Publication—Costs. Whenever a petition is presented as provided in RCW 85.20.020, the county legislative authority shall order an election to be held to determine if the district shall be reorganized. The county legislative authority shall specify the election date which may or may not be at the normal special district general election. Notice of the election shall be posted and published, and the election shall be conducted, as for any special district election. The notice shall state the number of the district so petitioning to reorganize, the place where and the time when the election is to be held. The auditor shall certify the results of the election to the county legislative authority. If the proposition to reorganize the district is approved by a simple majority vote of the voters voting on the proposition, the district shall be reorganized as either a diking improvement district or drainage improvement district upon the county legislative authority ordering the reorganization. The district shall be liable to the county for its costs incurred for the election. [1985 c 396 § 48; 1917 c 131 § 3; RRS § 4349. FORMER PART OF SECTION: 1933 c 182 § 3 now codified as RCW 85.22.030.]

Severability—1985 c 396: See RCW 85.38.900.

85.20.050 Reorganized district—Board—Indebtedness not affected. The board of commissioners of

the drainage or diking district shall constitute the board of supervisors of the reorganized district. From the entry of an order under RCW 85.20.030 reorganizing the district, such reorganized district, and its board of supervisors, shall have all the rights and powers of and be subject to all laws applicable to a diking or drainage improvement district, and such district so reorganized shall be dissolved without any further proceedings therefor. Notwithstanding such dissolution and reorganization, none of the outstanding bonds, warrants or other indebtedness of the district, shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such reorganization had not been made, and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired and shall be collected in the same manner as if no such reorganization had been had. The legislative authority of the county in which such reorganized district is situated shall have all the powers possessed at the time of the reorganization by the board of commissioners of such district to levy, assess, and cause to be collected any and all assessments or charges against any of the lands within such district that may be necessary or required to provide funds for the payment of all the bonds, warrants and other indebtedness thereof. [1985 c 396 § 49; 1917 c 131 § 5; RRS § 4351. FORMER PART OF SECTION: 1933 c 182 § 5, part, now codified in RCW 85.22.050. Formerly RCW 85.20.050, part and 85.20.060, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.20.070 Refunding bonds. Whenever in any district reorganized under the provisions of this chapter any bonds issued prior to such reorganization shall become payable and the county legislative authority determines that it is in the interest of the property owners of the district to have refunding bonds issued, the county legislative authority may authorize the district to issue refunding bonds in accordance with chapter 85.38 RCW. [1986 c 278 § 35; 1917 c 131 § 6; RRS § 4352. FORMER PART OF SECTION: 1933 c 182 § 6, now codified as RCW 85.22.060.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.20.120 Sale and issuance of refunding bonds. Upon the expiration of thirty days from the first publication of the notice given by the treasurer as provided herein, the county legislative authority of the county in which all or the major part of the district is located may issue and sell refunding bonds of the district subject to chapter 85.38 RCW. [1986 c 278 § 36; 1917 c 131 § 11; RRS § 4357. FORMER PART OF SECTION: 1933 c 182 § 11 now codified as RCW 85.22.110.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.20.140 Powers of board. The board of county commissioners shall have all the powers possessed by the board of commissioners of any district reorganized under

the provisions of this chapter prior to such reorganization, to levy assessments for the payment of the interest on any other bonds of the district not then payable and refunded under the provisions of this chapter, and to levy assessments to provide a sinking fund for the liquidation of such bonds at their maturity. Such assessments shall be called and collected in the manner provided by the law under which they were assessed, and such bonds shall be paid as provided by the law under which they were issued. Proper funds shall be established in the county treasury for the proceeds of the payments of such assessments, and such funds shall be applied to the payment of the bonds for the payment of which they were levied. [1917 c 131 § 13; RRS § 4359. FORMER PART OF SECTION: 1933 c 182 § 13 now codified as RCW 85.22.130.]

85.20.150 Extensions to compensate for inadequate benefits—Payment. Whenever in any district reorganized under the provisions of this chapter, extensions or additions are made to the system of improvements of the district to provide drainage or protection from overflow for lands previously found benefited and assessed for the construction of the original system of improvement which are not receiving benefits therefrom in proportion to the benefits found and the assessments levied against such lands, the costs of such extensions or additions shall be included as a cost of maintenance of the improvements of the district and shall be levied and collected in the manner provided for the levy and collection of such costs. [1917 c 131 § 14; RRS § 4360. FORMER PART OF SECTION: 1933 c 182 § 14 now codified as RCW 85.22.140.]

Chapter 85.22

REORGANIZATION OF DISTRICTS INTO IMPROVEMENT DISTRICTS—1933 ACT

Sections	
85.22.010	Reorganization authorized.
85.22.020	Petition to reorganize—Contents.
85.22.030	Elections—Notice—Publication—Costs.
85.22.050	Reorganized district—Commissioners retained, powers—Effect of reorganization.
85.22.060	Refunding bonds.
85.22.130	Powers of board.
85.22.140	Extensions to compensate for inadequate benefits—Payment.

85.22.010 Reorganization authorized. Any diking district organized under the provisions of chapter CXVII (117) of the Laws of 1895, and the acts amendatory thereof, which has been reorganized under the provisions of chapter 131 of the Laws of 1917, and the acts amendatory thereof, and any drainage district organized under the provisions of chapter CXV (115) of the Laws of 1895, and the acts amendatory thereof, whether the same has been organized as a drainage and irrigation improvement district or as a drainage district, may reorganize as a drainage and irrigation improvement district

or as a diking, drainage and irrigation improvement district in the manner provided in this chapter. [1933 c 182 § 1; RRS § 4477-1. Formerly RCW 85.20.010, part.]

Reviser's note: Chapter 117, Laws of 1895 referred to herein is the basic drainage district act codified as chapter 85.05 RCW, chapter 115, Laws of 1895 is the basic diking district act codified as chapter 85.06 RCW, Part I, and chapter 131, Laws of 1917 is the 1917 act authorizing reorganization of districts into improvement districts codified as chapter 85.20 RCW.

85.22.020 Petition to reorganize—Contents. For the purpose of securing such reorganization, a petition shall be presented to the clerk of the board of county commissioners of the county in which such district is located, at a regular or special meeting of the board. The petition shall be signed by the board of commissioners of the district and shall state the number of the district seeking to reorganize, and shall pray that such district be reorganized as a drainage and irrigation improvement district or diking, drainage and irrigation improvement district. [1933 c 182 § 2; RRS § 4477-2. Formerly RCW 85.20.020, part.]

85.22.030 Elections—Notice—Publication—Costs. Whenever a petition is presented as provided in RCW 85.22.020, the county legislative authority shall order an election to be held to determine if the district shall be reorganized. The county legislative authority shall specify the election date which may or may not be the same as the regular special district general election. Notice of the election shall be posted and published, and the election shall be conducted, as for any special district election. The notice shall state the number of the district so petitioning to reorganize, the place where and the time when the election is to be held. The auditor shall certify the results of the election to the county legislative authority. If the proposition to reorganize the district is approved by a simple majority vote of the voters voting on the proposition, the district shall be reorganized as either a diking improvement district or drainage improvement district upon the county legislative authority ordering the reorganization. The district shall be liable to the county for its costs incurred for the election. [1985 c 396 § 50; 1933 c 182 § 3; RRS § 4477-3. Formerly RCW 85.20.030, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.22.050 Reorganized district—Commissioners retained, powers—Effect of reorganization. The commissioners of the old district shall become the supervisors of the reorganized district and shall have all the rights and powers and be subject to all laws applicable to a diking or drainage improvement district. The supervisors shall also have the power of using such drainage ditches and equipment in the district for irrigation purposes at proper times and may adapt such ditches to such purposes by making the necessary improvements therein. The supervisors shall also have the right to purchase and install machinery, pumps and other equipment for the carrying on of such irrigation within the district. Notwithstanding such dissolution and reorganization,

none of the outstanding bonds, warrants or other indebtedness of the district, shall be affected thereby; and all lands liable to be assessed to pay any of such bonds, warrants or other indebtedness shall remain liable to the same extent as if such reorganization had not been made, and any and all assessments theretofore levied or made against any such lands shall be and remain unimpaired and shall be collected in the same manner as if no such reorganization had been had. The legislative authority of the county in which such reorganized district is situated shall have all the powers possessed at the time of the reorganization by the board of commissioners of such district to levy, assess, and cause to be collected any and all assessments or charges against any of the lands within such district that may be necessary or required to provide funds for the payment of all the bonds, warrants and other indebtedness thereof. [1985 c 396 § 51; 1933 c 182 § 5; RRS § 4477-5. Formerly RCW 85.20.050, part and 85.20.060, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.22.060 Refunding bonds. Whenever in any district reorganized under the provisions of this chapter any bonds issued prior to such reorganization shall become payable and the county legislative authority determines that it is in the interest of the property owners of the district to have refunding bonds issued, the county legislative authority may authorize the district to issue refunding bonds in accordance with chapter 85.38 RCW. [1986 c 278 § 37; 1933 c 182 § 6; RRS § 4477-6. Formerly RCW 85.20.070, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.22.130 Powers of board. The board of county commissioners shall have all the powers possessed by the board of commissioners of any district reorganized under the provisions of this chapter prior to such reorganization, to levy assessments for the payment of the interest on any other bonds of the district not then payable and refunded under the provisions of this chapter, and to levy assessments to provide a sinking fund for the liquidation of such bonds at their maturity. Such assessments shall be called and collected in the manner provided by the law under which they were assessed, and such bonds shall be paid as provided by the law under which they were issued. Proper funds shall be established in the county treasury for the proceeds of the payments of such assessments, and such funds shall be applied to the payment of the bonds for the payment of which they were levied. [1933 c 182 § 13; RRS § 4477-13. Formerly RCW 85.20.140, part.]

85.22.140 Extensions to compensate for inadequate benefits—Payment. Whenever in any district reorganized under the provisions of this chapter, extensions or additions are made to the system of improvements of the district to provide drainage or protection from overflow for lands previously found benefited and assessed for the construction of the original system of improvement which are not receiving benefits therefrom in proportion to the benefits found and the assessments levied against

such lands, the costs of such extensions or additions shall be included as a cost of maintenance of the improvements of the district and shall be levied and collected in the manner provided for the levy and collection of such costs. [1933 c 182 § 14; RRS § 4477-14. Formerly RCW 85.20.150, part.]

Chapter 85.24

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES

Sections

- 85.24.010 Districts authorized—Powers—Designation.
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85.24.065 Special assessments—Budgets—Alternative methods.
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85.24.310 Adjustment of indebtedness with the state.
85.24.900 Validation of existing districts—1923 c 140.

Special district creation and operation: Chapter 85.38 RCW.

85.24.010 Districts authorized—Powers—Designation. Whenever a portion of two or more counties require diking, drainage, or the erection of flood dams or drift barriers to prevent inundations, such portion of two or more counties may be organized into a district; and the board of commissioners, hereinafter provided for, shall have and possess the powers herein conferred, or

that may hereafter be conferred by law upon such districts and board of commissioners, and all such powers not in conflict with those herein granted, which now exist under the provisions of the laws of the state relating to the establishment, construction and maintenance of dikes and drains; and such districts shall be known and designated as "Diking and Drainage District No. in and counties (here insert name of counties), of the state of Washington"; and shall have the right to sue and be sued by, in the name of its board of commissioners herein provided for, and shall have perpetual succession, and shall adopt and use a seal. [1923 c 140 § 1; 1909 c 225 § 1; RRS § 4361.]

85.24.015 Certain powers and rights governed by chapter 85.38 RCW. Intercounty diking and drainage districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 34.]

Severability—1985 c 396: See RCW 85.38.900.

85.24.025 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Intercounty diking and drainage improvement districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 14.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.24.065 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which intercounty diking and drainage districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which intercounty diking and drainage districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 27.]

Severability—1985 c 396: See RCW 85.38.900.

85.24.070 Board of commissioners—Oath, bond—Plan of improvement—Levy of assessment, procedure. A three-member board of commissioners shall be the governing body of an intercounty diking and drainage district. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW.

The members of such board, before entering upon their duties, shall take and subscribe on oath substantially as follows:

State of Washington,
County of } ss.

I, the undersigned, a member of the board of commissioners of the diking and drainage district No., in and counties, do solemnly

swear (or affirm) that I will faithfully discharge my duties as a member of the commission.

Upon the taking of such oath and the entering into a bond, as provided in RCW 85.38.080, the county legislative authority shall enter an order upon its records that the three persons named have qualified as the board of commissioners for diking and drainage district No. _____, in _____ and _____ counties, and that those persons and their successors do and shall constitute a board of commissioners for the diking and drainage district. The order when made shall be conclusive of the regularity of the election and qualification of the board of diking and drainage commissioners for the particular district, and the persons named therein shall constitute the board of diking and drainage commissioners.

The board of diking and drainage commissioners shall thereupon immediately organize and elect one of their number as chairman and may either appoint a voter of the district or another diking and drainage commissioner to act as secretary. The board shall then proceed to make and cause to be made specifications and details of a system which may be adopted by the board for the improvements to be made, together with an estimate of the total cost thereof; and shall, upon the adoption of the plan of improvement of the district, proceed to acquire the necessary property and property rights for the construction, establishment and maintenance of the system either by purchase or by power of eminent domain as hereinafter provided. Upon such acquisition being had, the board shall then proceed with the construction of the diking and drainage system and in doing so shall have the power to do the work directly or in its discretion to have all or any part of the work done by contract. In case the board shall decide upon doing the same by contract, it shall advertise for bids for the construction work, or such part thereof as they may determine to have done by contract, and shall have the authority to let a contract to the lowest responsible bidder after advertising for bids.

Any contractor doing work hereunder shall be required to furnish a bond as provided by the laws of the state of Washington relating to contractors of public work.

The board shall have the right, power and authority to issue vouchers or warrants in payment or evidence of payment of any and all expenses incurred under this chapter, and shall have the power to issue the same to any contractor as the work progresses, the same to be based upon the partial estimates furnished from time to time by engineers of the district. All warrants issued hereunder shall draw interest at a rate determined by the board.

Upon the completion of the construction of the system, and ascertainment of the total cost thereof including all compensation and damages and costs and expenses incident to the acquiring of the necessary property and property right, the board shall then proceed to levy an assessment upon the taxable real property within the district which the board may find to be specially benefited by the proposed improvements; and shall make

and levy such assessment upon each piece, lot, parcel and separate tract of real estate in proportion to the particular and special benefits thereto. Upon determining the amount of the assessment against each particular tract of real estate as aforesaid, the commissioners shall make or cause to be made an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, and a general description of each lot, block, parcel or tract of land within the district, and the amount assessed against the same, as separate, special or particular benefits. The board shall thereupon make an order setting and fixing a day for hearing any objections to the assessment roll by any one affected thereby, which day shall be at least twenty days after the mailing of notices thereof, postage prepaid, as herein provided. The board shall send or cause to be sent by mail to each owner of the premises assessed, whose name and place of residence is known, a notice, substantially in the following form:

To _____: Your property (here describe the property) is assessed \$_____. A hearing on the assessment roll will be had before the undersigned at the office of the board at _____ on the _____ day of _____ at which time you are notified to be and appear and to make any and all objections which you may have as to the amount of the assessment against your property, or as to whether it should be assessed at all; and to make any and all objections which you may have to the assessment against your lands, or any part or portion thereof.

The failure to send or cause to be sent such notice shall not be fatal to the proceedings herein described. The secretary of the board on the mailing of the notices shall certify generally that he has mailed such notices to the known address of all owners, and such certificate shall be prima facie evidence of the mailing of all such notices at the date mentioned in the certificate.

The board shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places within the boundaries of the district, and by publishing the same at least five successive times in a daily newspaper published in each of the counties affected; and for at least two successive weeks in one or more weekly newspapers within the boundaries of the district, in each county if there are such newspapers published therein, and if there is no such newspaper published, then in one or more weekly newspapers, having a circulation in the district, for two successive weeks. The notice shall be signed by the chairman or secretary of the board of commissioners, and shall state the date and place of hearing of objections to the assessment roll and levy, and of all other objections; and that all interested parties will be heard as to any objection to the assessment roll and the levies as therein made. [1985 c 396 § 53; 1981 c 156 § 26; 1923 c 140 § 4; 1909 c 225 § 5; RRS § 4365. FORMER PART OF SECTION: 1909 c 225 §§ 9, 11, 21, 28, 32 now codified as RCW 85.24.071, 85.24.073, 85.24.075, 85.24.077 and 85.24.079. Formerly RCW 85.24.070, 85.24.090, 85.24.100, 85.24.110 and 85.24.120.]

Severability—1985 c 396: See RCW 85.38.900.

85.24.071 Board of commissioners—Power to conduct business, make contracts, etc. The commissioners herein provided for and their successors in office, shall from the time of their election and qualifications aforesaid, have the power, and it shall be their duty, to manage and conduct the business affairs of the district, making and executing all necessary contracts, appoint such agents and employees as may be required, and prescribe their duties, and perform any and all acts which may be necessary, proper or requisite to carry into effect their duties as commissioners, and all such other acts as may be provided in this chapter or in any other act. [1909 c 225 § 9; RRS § 4369. Formerly RCW 85.24.070, part.]

85.24.073 Board of commissioners—Construction and maintenance powers. Said board of commissioners herein provided for shall have the exclusive charge of the construction and maintenance of all dikes and drainage systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. [1909 c 225 § 11; RRS § 4371. Formerly RCW 85.24.070, part.]

85.24.075 Board of commissioners—Duties of board officers—Quorum. The chairman of the board shall preside at all meetings and shall have the right to vote upon all questions the same as other members, and shall perform such duties in addition to those in this chapter prescribed as may be fixed by the board. The secretary of the board shall perform the duties in this chapter prescribed, and such other duties as may be fixed by the board. A majority of the board shall constitute a quorum for the transaction of business, but it shall require a majority of the entire board to authorize any action by the board. [1909 c 225 § 21; RRS § 4381. Formerly RCW 85.24.070, part.]

85.24.077 Board of commissioners—Power to adjourn proceedings. The board of commissioners shall have power to adjourn any and all proceedings before them from time to time. [1909 c 225 § 28; RRS § 4388. Formerly RCW 85.24.070, part.]

85.24.079 Board of commissioners—Rules and regulations. The board shall have power and authority to make rules and regulations for the purpose of carrying into effect any of the provisions of this chapter. [1909 c 225 § 32; RRS § 4392. Formerly RCW 85.24.070, part.]

85.24.080 Board of commissioners—Compensation and expenses—Secretary's salary—Affidavit of amounts. The members of the board shall receive as compensation up to twenty-five dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: *Provided*, That the board may fix a different salary for

the secretary thereof in lieu of the per diem. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefore from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his duties. [1985 c 396 § 54; 1909 c 225 § 33; RRS § 4393.]

Severability—1985 c 396: See RCW 85.38.900.

85.24.130 Objections to assessment—Procedure. Any person interested in any real estate affected by said assessment may, within the time fixed, appear and file objections. As to all parcels, lots or blocks as to which no objections are filed, within the time as aforesaid, the assessment thereon shall be confirmed and shall be final. On the hearing, each person may offer proof, and proof may also be offered on behalf of the assessment, and the board shall affirm, modify, change and determine the assessment, in such sum as to the board appears just and right. The commissioners may increase the assessment during such hearing upon any particular tract by mailing notice to the owner at his last known address, to be and appear within a time not less than ten days after the date of the notice, to show cause why his assessment should not be increased. When the assessment is finally equalized and fixed by the board, the secretary thereof shall certify the same to the county treasurer of each county in which the lands are situated, for collection; or if appeal has been taken from any part thereof, then so much thereof as has not been appealed from shall be certified. In case any owner of property appeals to the superior court in relation to the assessment or other matter when the amount of the assessment is determined by the court finally, either upon determination of the superior court, or appeal to the supreme court or the court of appeals, then the assessment as finally fixed and determined by the court shall be certified by the clerk of the proper court to the county treasurer of the county in which the lands are situated and shall be spread upon and become a part of the assessment roll hereinbefore referred to. [1971 c 81 § 167; 1909 c 225 § 6; RRS § 4366.]

85.24.140 Appeal. Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him, may appeal therefrom to the superior court of the county in which the land is situated. Such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts. All notice of appeal shall be filed with the said board, and shall be served upon the prosecuting attorney of the county in which the action is brought. The secretary of the board

shall, at appellant's expense, certify to the superior court so much of the record as appellant may request, and the cause shall be tried in the superior court de novo.

Any person desiring to appeal from any final order or judgment made by the superior court concerning any assessment authorized by this chapter, may appeal therefrom to the supreme court or the court of appeals, in accordance with the laws of this state relative to appeals, except that all such appeals shall be taken within thirty days after the entry of such judgment. [1971 c 81 § 168; 1909 c 225 § 7; RRS § 4367.]

85.24.150 Lien of assessments—Notice and collection. The final assessment shall be a lien paramount to all other liens except liens for taxes and other special assessments upon the property assessed, from the time the assessment roll shall have been finally approved by the board, and placed in the hands of the county treasurers as collectors. After the roll shall have been delivered to the county treasurers for collection, each treasurer shall proceed to collect the amounts due in the manner that other taxes are collected as to all lands situated within the county of which he is treasurer. The treasurer shall give at least ten days' notice in one or more newspapers of general circulation in the counties in which the lands are situated for two successive weeks, that the roll has been certified to him for collection, and that unless payment be made within thirty days from the date of the notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged, at a rate not to exceed seven percent per annum. The interest shall be paid annually. The county treasurer shall proceed to collect the amount due each year upon the publication of notice as hereinafter provided. In such publication notice it shall not be necessary to give a description of each tract, piece or parcel of land, or of the names of the owners thereof.

The treasurer shall also mail a copy of the notice to the owner of the property assessed, when the post office address of the owner is known to the treasurer; but the failure to mail the notice shall not be necessary to the validity of the collection of the tax. [1985 c 469 § 83; 1909 c 225 § 8; RRS § 4368.]

85.24.160 Payment of assessment without interest. The owner of any lot or parcel of land charged with any assessment, as hereinbefore provided, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided. [1986 c 278 § 38; 1983 c 167 § 199; 1909 c 225 § 17; RRS § 4377.]

Severability—1986 c 278: See note following RCW 36.01.010.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

85.24.170 District treasurer—Collection, remittance and disbursement of assessments. The treasurer of each county shall collect the taxes levied and assessed

hereunder upon all that portion of the property situated within the county for which the treasurer is acting. The treasurer of the county in which the smaller or minor portion of the taxes are to be collected shall forward the amount collected by him quarterly each year on the first Monday in January, April, July and October, to the treasurer of the county in which the larger or major portion of the taxes are to be collected. The treasurer of the county in which the larger portion of the taxes have been levied and assessed shall be the disbursing officer of such diking and drainage district, and shall pay out the funds of such district upon orders drawn by the chairman and secretary of the board acting under authority of the board, and shall be the treasurer of the fund. [1909 c 225 § 22; RRS § 4382.]

85.24.180 Sale of property for delinquency—Procedure—Purchaser's interest. If any of the installment of taxes are not paid as herein provided, the county treasurer shall sell all lots or parcels of land on which taxes have been levied and assessed, whether in the name of the designated owner or the name of an unknown owner, to satisfy all delinquent and unpaid assessments, interest, penalties and costs. The treasurer must commence the sale of property upon which taxes are delinquent within sixty days after the same become delinquent, and continue such sale from day to day thereafter until all the lots and parcels of land upon which taxes have not been paid are sold. Such sales shall take place at the front door of the court house. The proper treasurer shall give notice of such sales by publishing a notice thereof once a week for two successive weeks in two or more newspapers published within the district, or if no such newspaper is published, within the district, then within any two or more newspapers having a general circulation in such district; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of interest, penalty and cost at the date of sale, including costs of advertising had upon each of such lots, pieces or parcels of land, together with the names of the owners thereof, if known to the treasurer, or the word "unknown" if unknown to the treasurer, and shall specify the time and place of sale, and that the several lots or parcels of land therein described, or so much as may be necessary, will be sold to satisfy the assessment, interest, penalty and cost due upon each. All such sales shall be made between the hours of ten o'clock a.m. and three o'clock p.m. Such sales shall be made in the manner now prescribed by the general laws of this state for the sale of property for delinquent taxes, and certificates and deeds shall be made to the purchasers and redemptions made as is now prescribed by the general laws of this state in the manner and upon the terms therein specified: *Provided*, That no tax deeds shall be made until after the expiration of one year after the issuance of the certificate, and during such year any person interested may redeem. A certificate of purchase shall be issued to the district for all lots and parcels of land not sold. Certificates issued to the district shall be delivered to the board of commissioners of the district. The board of

commissioners of the district may sell and transfer any such certificate to any person who is willing to pay to the district the amount for which the lot or parcel of land therein described was stricken off to the district, with the interest subsequently accrued thereon. Within ten days after the completion of sale of all lots, pieces and parcels of land authorized to be sold as aforesaid, the treasurer must make a return to the board of commissioners with a statement of the doings thereon, showing all lots and parcels of land sold by him, to whom sold and the sum paid therefor. The purchaser at improvement sales acquires a lien on the lot, piece or parcel of land sold for the amount paid by him at such sales for all delinquent taxes and assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of ten percent per annum from the date of such payment. [1909 c 225 § 23; RRS § 4383. Formerly RCW 85.24.180 and 85.24.190, part.]

85.24.190 Disposal by commissioners of lands not redeemed from sale—Use of proceeds. The board of commissioners of the district shall have the power to sell, lease and dispose of any and all lands which may be acquired by it by virtue of deeds issued to it by the treasurer for lands not redeemed from sale, and the funds derived from any disposition of such land shall become the fund of the district to be used for the benefit of the district under the direction of its board of commissioners. [1909 c 225 § 24; RRS § 4384. FORMER PART OF SECTION: 1909 c 225 § 23, part, now codified as RCW 85.24.180.]

85.24.200 Reassessments. If because of a substantial reduction of the amount of the assessment upon any lands, the result would be to leave the amount of the assessment upon other lands insufficient, or if for any cause the assessment should be held invalid or become inoperative, then the board shall have power to make a reassessment of all lands to the same extent as the original assessment. [1909 c 225 § 30; RRS § 4390.]

85.24.210 Maintenance levy. It shall be the duty of the board to levy an annual tax upon all property within the district, for the purpose of maintaining such diking and drainage system. Such levy shall be made and the taxes collected in the manner now provided by law for the levying and collection of school district taxes. [1909 c 225 § 31; RRS § 4391.]

Property taxes: Title 84 RCW.
Schools, generally: Title 28A RCW.

85.24.220 Segregation of assessments. When a piece, lot, or tract of land has been assessed in one body, if the same is subsequently subdivided by the owner, or there should be purchasers of different portions of such tract, then the owner or purchaser may pay the taxes upon such piece or tract of land, paying the proportion which is proper upon such separate piece or tract. [1909 c 225 § 25; RRS § 4385.]

85.24.235 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 26.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.24.240 Counties to contribute for benefits to roads, bridges, or health of people. Whenever any highways, roads, or bridges are maintained by either county in which a diking and drainage district may be established, as herein provided, and it shall appear that the construction and maintenance of such diking and drainage system will be beneficial to such highways, roads, and bridges, or which will be beneficial to such highways, roads and bridges as may thereafter be constructed or maintained by the county, in which any part of the system of dikes and drains is situated, then the board of county commissioners of such county may, and it shall be the duty of such board to appropriate to such diking and drainage district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; and whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any diking or drainage district under the provisions of this chapter, shall on account of the health of the people of the county be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such diking and drainage district in such an amount to such board as may seem proper. [1909 c 225 § 18; RRS § 4378.]

Basis of supplemental assessments: RCW 85.07.050.

Benefits to public roads, how paid: RCW 85.07.040.

85.24.250 Municipality may contribute. Whenever it shall appear to the city council of any incorporated city or town not included or not wholly included within the limits of any diking or drainage district established hereunder, which incorporated city or town may be within a county in which a portion of such district is located that the construction and maintenance of such diking and drainage system will be beneficial to the health of the inhabitants of said incorporated city and to the general welfare of the said city, then the city council of said city is hereby empowered and authorized to appropriate such amount of money out of the general funds of the city as may to the city council seem proper and just to such diking and drainage system, or the city council may for such purpose levy an assessment upon all the property in said city subject to taxation by said city, which shall not exceed twelve and one-half cents per thousand dollars of assessed value of property. [1973 1st ex.s. c 195 § 119; 1909 c 225 § 19; RRS § 4379.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitation of levies: RCW 84.52.050.

85.24.260 Acquisition of property—Eminent domain. The districts organized under the provisions of this chapter, and the commissioners appointed and qualified as such shall have the right of eminent domain with the power by and through the board of commissioners to

condemn and cause to be condemned and appropriated private property for the use of said district in the construction and maintenance of the system of dikes, drains, flood dams and drift barriers, and for any other purpose proper, necessary and convenient for the purpose of carrying into effect the powers vested in said district and the commissioners thereof; and that the property of private corporations shall be subject to the same rights of eminent domain as private individuals. Said board of commissioners shall also have the power to acquire by purchase, in the name of the district, any and all real property necessary to make the improvements herein provided for. [1909 c 225 § 10; RRS § 4370. FORMER PART OF SECTION: 1909 c 225 §§ 12, 20, 27, now codified as RCW 85.24.261, 85.24.263 and 85.24.265.]

85.24.261 Eminent domain—Procedure. In the exercise of the right of eminent domain, all proceedings shall be prosecuted by the board of commissioners for and on behalf of the district, or in the name of the district itself, and such proceedings shall be conducted in the superior court of the county in which the lands sought to be condemned are situated, and shall be in the manner and in accordance with the procedure now provided by law regulating the mode of procedure to appropriate lands, real estate, or property by corporations for corporate purposes. [1909 c 225 § 12; RRS § 4372. Formerly RCW 85.24.260, part.]

85.24.263 Eminent domain—Rights-of-way. In the construction and maintenance of the improvements herein provided for, the said district may acquire by purchase or otherwise, and by the exercise of the right of eminent domain, any right-of-way through, over and across any property situated without said district which may be necessary or proper to the completion of the system of improvements. [1909 c 225 § 20; RRS § 4380. Formerly RCW 85.24.260, part.]

85.24.265 Eminent domain—Against public lands. Any district created hereunder is hereby granted the right to exercise the power of eminent domain against any lands or other property belonging to the state of Washington or any municipality thereof, and such power of eminent domain shall be exercised under and by the same procedure as is now, or may hereafter be, provided by the laws of this state for the exercise of the right of eminent domain by ordinary railroad corporations. [1909 c 225 § 27; RRS § 4387. Formerly RCW 85.24.260, part.]

Corporations, eminent domain: Chapter 8.20 RCW.

Railroads, corporate powers: Chapter 81.36 RCW.

85.24.270 Cities may be included in district. Within the limits of said diking or drainage district may be included any incorporated city or town, or any part thereof. [1909 c 225 § 14; RRS § 4374. FORMER PART OF SECTION: 1909 c 225 § 15, now codified as RCW 85.24.275.]

85.24.275 Assessment of state lands. Any of the state, school, or granted land within the district, shall also be assessed the same as other lands are assessed in proportion to the benefit, but any such lands shall not be sold for delinquencies, but the amount of the assessment shall be paid by the state at the time, in the manner, under the circumstances, and in accordance with the provisions of the act relating to the payment by the state of assessments made on state, school and granted lands for the construction and maintenance of dikes and drains benefiting such lands, approved March 5, 1907; Laws of 1907, pp. 125–126. [1909 c 225 § 15; RRS § 4375. Formerly RCW 85.24.270, part.]

Reviser's note: The 1907 act referred to herein appears to be superseded by chapter 164, Laws of 1919 codified as chapter 79.44 RCW. See *Paine v. State*, 156 Wash. 31, 40. See also reviser's notes following RCW 85.05.110 and 85.06.110.

85.24.280 Improvement of streams—Scope of powers. Any district so established as aforesaid through its board of commissioners shall have the right, power and authority to straighten, deepen and improve any and all rivers, watercourses, or streams, whether navigable or otherwise, flowing through or located within the boundaries of said diking or drainage district, whenever necessary or proper in carrying out the objects of the system. The district by and through its board of commissioners shall also have the power to construct all needed auxiliary ditches, canals, flumes, locks, flood barriers, and all necessary artificial appliances in the construction of the system, and which shall be necessary and advisable to protect the land in any such district from overflow or to assist, or which may become necessary in the preservation or maintenance of such system. [1909 c 225 § 13; RRS § 4373. FORMER PART OF SECTION: 1909 c 225 § 26, now codified as RCW 85.24.285.]

85.24.285 Improvement of streams—Stream beds are property of district—Disposition. The board shall have power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such district; and the beds of any streams or rivers which may be changed, shall become the property of the district, and the board shall have the power to sell and dispose of the same, or exchange the same or any portion thereof for other lands. [1909 c 225 § 26; RRS § 4386. Formerly RCW 85.24.280, part.]

85.24.290 Service of notices on agent of owner. When any notice is required to be given to the owner under any of the provisions of this chapter, such notice shall be given to the agent instead of the owner, in case the owner prior to the giving of the notice required by the board or proper officer has filed with the board or proper officer the name of the agent with his post office address. [1909 c 225 § 29; RRS § 4389.]

85.24.310 Adjustment of indebtedness with the state. See chapter 87.64 RCW.

85.24.900 Validation of existing districts—1923 c 140. The organization, establishment and creation of all diking and drainage districts in this state situated in two or more counties heretofore had or made, or attempted to be had or made, pursuant to the provisions of chapter 4, Title XXVII of Remington's Compiled Statutes, relating to the creation and establishment of such diking and drainage districts, and all acts, steps or proceedings had or attempted to be had by any such district, are hereby for all purposes declared legal and valid, and such districts situated in two or more counties are hereby declared duly organized, established and created, and all contracts, obligations or debts heretofore made or incurred by or in favor of such diking and drainage district situated in two or more counties so attempted to be organized, established and created, and all official bonds or other obligations executed in connection with or in pursuance of such organization, are hereby declared legal and valid, and of full force and effect. [1923 c 140 § 6; RRS § 4376-1.]

Chapter 85.28

PRIVATE DITCHES AND DRAINS

Sections

85.28.010	Private parties authorized to establish ditches and drains.
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85.28.150	Dike, dam or causeway at Bachelor Slough.

85.28.010 Private parties authorized to establish ditches and drains. The owner or owners of any land which requires drainage and which is so situated that it is necessary to the proper drainage of the same to construct ditches or drains across the lands of others, may obtain the location and establishment of such ditch or drain across such lands, in the manner provided in this chapter. [1899 c 125 § 1; RRS § 4394. Prior: 1883 p 77 § 1; 1875 p 92 § 2; 1863 p 485 § 1; 1858 p 31 § 1.]

85.28.020 Petition to appropriate—Contents. The person or persons desiring the location and establishment of such ditch or drain may file in the superior court of the county in which the lands sought to be appropriated are situated, a petition showing the name of the petitioner or petitioners; a description of the lands to be benefited, and of those over which the ditch would pass, and setting forth the name of every owner, incumbrancer, or other person or party interested in the lands over which said ditch would pass, or any part thereof, so

far as the same can be ascertained from the public records of the county. Such petition shall also show the object for which the lands are sought to be appropriated, the necessity for the appropriation, and the length, width and depth of the ditch on the lands of each separate owner, with a description of said ditch, as nearly as practicable; and shall also set out the estimated damage to the lands of each owner to be crossed by such ditch. [1899 c 125 § 2; RRS § 4395. Prior: 1883 p 77 § 2, part.]

85.28.030 Cost bond by petitioner. The petitioner, or someone in his behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [1899 c 125 § 3; RRS § 4396. Prior: 1883 p 77 § 2, part.]

85.28.040 Viewers to be appointed—Duties. Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the *county surveyor of the county in which the lands are situated (unless said *county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his place who shall receive the same compensation as is allowed by law to *county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [1899 c 125 § 4; RRS § 4397. Prior: 1883 p 78 § 4; Code 1881 § 2504; 1877 p 314 § 2; 1875 p 93 § 3; 1863 p 485 § 1; 1858 p 31 § 1.]

***Reviser's note:** This section refers to the "county surveyor". 1907 c 160 § 1 designated the county surveyor as county engineer; 1925 ex.s. c 167 § 1 abolished the elective office of engineer, except in Class A and first class counties, and the powers and duties were transferred to the county commissioners with power to employ an engineer; 1937 c 187 § 4 provided duties to vest in county commissioners who were directed to employ a county road engineer. See RCW 36.75.050 and chapter 36.80 RCW.

85.28.050 Report of viewers and plat to be filed. When said viewers shall have made said examination they shall, within ten days after the day appointed by the court for such examination, report to the court, in writing, (filing the same with the clerk of said court) their decision as to the necessity for said ditch and if they deem such ditch necessary, then the *county surveyor shall file with such report an accurate description and plat of the proposed ditch, showing the course

thereof as recommended by the viewers. The viewers shall also estimate the amount of damage which each separate owner would suffer by reason of the construction thereof. [1899 c 125 § 5; RRS § 4398. Prior: 1883 p 79 § 8; Code 1881 § 2507; 1877 p 314 § 2; 1875 p 94 § 6.]

*Reviser's note: "County surveyor", see note following RCW 85.28.040.

85.28.060 Summons to landowners—Contents and form. Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summons are issued in civil actions, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the Superior Court of the State of Washington, for _____ County.

In the matter of the application of _____ for a private ditch.

The state of Washington to _____

Whereas, on the _____ day of _____ 19__ filed his petition in the above entitled court praying that a private ditch or drain be established across the following described lands, to wit: _____

_____ for the purpose of draining certain lands belonging to said _____, and whereas, on the _____ day of _____, 19__, Messrs. _____ and _____ with _____ *county surveyor of _____ county, were appointed to view said premises in the manner provided by law, and said viewers having, on the _____ day of _____, 19__, filed their report in this court, finding in favor of said ditch and locating the same upon the following course: _____ for a distance of _____ upon said land, and of a width of _____ feet and a depth of _____ feet; and they further find that said land will be damaged by the establishing and construction of said ditch in the sum of \$_____: Now therefore, you are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and file your objections to said petition and the report of said viewers, with this court; and in case of your failure

so to do, said report will be approved and said petition granted.

Plaintiff's Attorney.

P.O. Address -----

[1899 c 125 § 6; RRS § 4399. Formerly RCW 85.28-.060 and 85.28.070.]

*Reviser's note: "County surveyor", see note following RCW 85.28.040.

85.28.080 Service by publication. In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself so that personal service cannot be had upon him, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: *Provided*, That no other or different form of summons shall be required for publication than is required for personal service. [1899 c 125 § 7; RRS § 4400.]

85.28.090 Trial—Findings or verdict—Decree—Time for payment of award. Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: *Provided*, If any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: *Provided further*, That it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [1899 c 125 § 8; RRS § 4401.]

85.28.100 Appeal. No appeal shall be taken from the finding of the court as to the necessity of such ditch or as to the route thereof until after final judgment or decree is entered: *Provided*, That exceptions shall be taken

and allowed to such orders at the time that they are made, and appeal from such orders and from the award of damages shall be taken at the same time. All the provisions of the law in regard to appeals in civil actions shall apply to the proceedings provided for in this chapter. [1899 c 125 § 9; RRS § 4402.]

85.28.110 Compensation of viewers—Costs. The viewers appointed under the provisions of this chapter shall receive the sum of two dollars per day for their services, and the *county surveyor shall receive such compensation as is allowed by law for like services, the same to be taxed as costs and paid by the petitioner. All other costs shall be the same as in civil actions in the superior court. [1899 c 125 § 10; RRS § 4403.]

*Reviser's note: "County surveyor", see note following RCW 85.28.040.

85.28.120 New viewers may be appointed if report not adopted. In case the court should not for any reason adopt the report of the viewers, or the same should be deemed insufficient for any reason, the court may appoint other viewers whose duties shall be the same as the duties of the viewers first appointed. [1899 c 125 § 11; RRS § 4404.]

85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts. Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of materialmen and mechanics are now by law enforced. [Code 1881 § 2517; No RRS. Prior: 1877 p 258 § 1.]

85.28.140 Dike or ditch as common boundary—Division of costs. Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he may join on to said tract and adopt said dike as his boundary by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the

dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: *Provided always*, That when such dike has become the common boundary [of two adjacent tracts, it shall be and remain the common boundary] and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike. [Code 1881 § 2518; No RRS. Prior: 1877 p 258 § 2.]

Reviser's note: Bracketed matter did not appear in the enrolled bill of 1881 but was bracketed in by the Code of 1881 to conform with the preceding session law of 1877 from which it was derived.

85.28.150 Dike, dam or causeway at Bachelor Slough. It shall be lawful for any adjacent or abutting owner or owners, to construct a dike, dam, or causeway over or in the waters of the state of Washington described as: That certain body of water lying between Bachelor Island and the mainland, appearing on the state survey map made by Edw. C. Dohm, state field engineer, as Columbia Slough and designated on the map as compiled by the U.S. Coast and Geodetic Survey of September, 1937, Number "U.S.C.&G.S. 6154" as Bachelor Island Slough from its point of confluence with Lake River South to the Columbia River, in sections 13, 23, 24, 26 and 35, township 4 north, range 1 west of the Willamette Meridian, in Clark county, Washington: *Provided*, That the location and plans thereto are submitted to and approved by the chief of engineers of the United States and the secretary of war of the United States, before construction is commenced subject to the terms of section 9 of the River & Harbor Act, approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401) and: *Provided further*, That all such dikes, dams, causeways, or other structures, shall be constructed at the expense of the owners. [1947 c 276 § 1; No RRS.]

Chapter 85.32

DRAINAGE DISTRICT REVENUE ACT OF 1961

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85.32.010 Declaration of necessity and purpose. The maintenance of drainage districts is essential to the economy of the state. The influx of population and changes in land use since many such districts were formed, has made obsolete and unjust the method used under existing law to provide funds for the operation of such districts and for the maintenance and expansion of its drainage systems. Also, in many instances, properties lying outside of the territorial limits of such districts, have been and are being developed in such a manner that waters therefrom, through artificial rather than natural processes, are accumulated and discharged for outlet upon lands within such districts, and the facilities of such district are used without charge to furnish service and benefit to such lands. To furnish remedy for such situations where they are found to exist the state declares that it has an interest therein and this chapter is passed. [1961 c 131 § 2.]

85.32.020 Definitions. As used in this chapter:

"District" means a regularly formed and established drainage district under the provisions of this title.

"Board" means the board of commissioners of a regularly formed and established drainage district under the provisions of this title. [1961 c 131 § 3.]

85.32.030 Powers of board in general. The board may: (1) Make initial determination that the district's facilities furnish benefit to improvements upon land as well as land alone within the district in protecting against and furnishing run-off for surface and/or flood waters; (2) Make initial determination that lands and improvements thereon outside of the territorial limits of the district are receiving a service from the facilities of the district, and are benefited thereby in that waters from such lands through ditches, drains, or other artificial methods, other than by natural flow or seepage, are so cast as to have outlet through the district's facilities; (3) Determine that properties so found to be served should pay a just proportion of the operational and maintenance costs of the district; (4) In connection with so finding, cause a roll of property thus served and benefited by the district's facilities to be prepared and filed with it, and give notice of a hearing thereon as provided in this chapter; (5) Hold public hearings to determine the ultimate facts and approve an ultimate roll of properties served and benefited by the facilities of the district and valuations thereof to serve as a basis against which annual dollar rate levy may be assessed for continuous benefits furnished such properties; make revision thereof

as the facts warrant from time to time; provide for the levying of such dollar rate levy; and make return of such roll finally adopted by certifying and filing a copy thereof with the auditor, assessor and treasurer of the county wherein the properties involved are located. [1973 1st ex.s. c 195 § 120; 1961 c 131 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.040 Initial determination—Roll—Resolution, contents. In the initial instance, when the board of any district, desires to use the method and procedure provided in this chapter, and in order that uniformity may be had, it may cause a roll of all properties within the district claimed to be benefited by its drainage system, and in addition or as a part thereof, a roll of all properties outside of the territorial limits of said district claimed to be served and benefited by the drainage systems of said district, to be prepared and filed with it. Thereupon, the board shall by resolution declare:

(1) That it has made initial determination that the district's facilities are furnishing and will furnish service and benefit to the properties, including improvements thereon, described in such roll;

(2) That such roll has been filed with it and will remain so filed and open to inspection by any party interested therein at all reasonable times;

(3) That a public hearing will be held by the board at a time and place stated to give consideration to the facts and make ultimate determination of the same and to said roll;

(4) That when said roll is finally adopted, annual dollar rate levies will be made by the district against said properties based upon the valuation thereof as shown on said roll when ultimately adopted to raise money based on benefit and service for the continuous operation and maintenance of said district;

(5) That at the time of hearing, it will hear all objections filed and will review, adopt, modify, or revise said roll consistent with existing facts to the end that property receiving service and benefit from the facilities of the district shall pay justly and equitably therefor in proportion to benefit received and;

(6) That upon said hearing or adjournments thereof, the board will determine the ultimate facts concerning service and benefit received by all properties ultimately contained in said roll and as to such properties it will adopt the roll in final form and proceed as in this chapter provided. [1973 1st ex.s. c 195 § 121; 1961 c 131 § 5.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.050 Contents of roll—Assessed, equalized value prima facie correct—Separate levies for prior indebtedness—Adjustment of roll. The roll of properties referred to in this chapter shall contain (1) a description of all properties and improvements thereon, with the name of the owner or the reputed owner thereof and his address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located, and

(2) the determined value of such land and improvements thereon as last assessed and equalized by the taxing agencies of such county. Such assessed and equalized values shall be deemed prima facie as a just, fair and correct base of value for consideration by the board in its determination ultimately of the just and correct base of value in each instance against which annual dollar rates shall be levied by the district for the operation of the district and the expansion and maintenance of its facilities.

If property outside of the territorial limits of the district are upon the roll as adopted ultimately, and the district has prior indebtedness existing, the board shall set up separate dollar rate levies for the retirement thereof until it is extinguished, which levies shall be applied solely against the properties within the territorial limits of the district. Adjustments of the roll shall be made before final adoption in such a manner that the money raised through annual dollar rate levies for maintenance, expansion and operational costs of the district in no instance shall exceed the value of the service rendered or to be rendered and the benefit received and to be received by the property involved. [1973 1st ex.s. c 195 § 122; 1961 c 131 § 6.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.060 Notice of hearing—Contents. When the board causes a property roll to be filed with it and a hearing to be held thereon as provided in this chapter, it shall give notice of the hearing in the following manner:

The notice shall be published at least three times in consecutive issues in a weekly newspaper, or once a week for three consecutive weeks in a daily newspaper having general circulation in the area involved. The last publication shall be more than fifteen days prior to date of hearing. The board also shall cause a copy of the notice to be mailed in regular course of the federal mail at least thirty days prior to the date of the hearing to the owner or reputed owner of the property at his address, all as shown on the tax rolls or records of the county taxing agencies of the county wherein the property is situated, such notice being deemed adequate and sufficient. The sworn affidavit of the one doing such mailing shall be deemed conclusive of the fact that the notice was mailed.

The notice shall state the following:

(1) That the board has tentatively determined that the property of the owner or reputed owner named is receiving and will receive service and benefit from the facilities of the district;

(2) That the board has caused a tentative roll of the properties with any improvements thereon which are receiving and will receive service and benefit to be filed with it; and that the roll shows a base of valuation thereon for the properties against which annual dollar rates will be levied and collected in the same manner as general taxes to pay the fair value of the benefit and service received and to be received by the property through use of the facilities of the district, and to pay

the annual cost of operation, development and maintenance of the district and its facilities;

(3) That on a date, time and place stated, the board will give consideration to the facts and the roll, will hear all objections filed, will review the roll and alter, modify, or change the same consistent with facts established and with equity and fair dealing concerning the properties involved to the end that just levies will be made for service and benefits received and to be received against each property for the purposes mentioned; and at the hearing or continuance thereof, it will adopt the roll in final form and certify and file a copy thereof with the assessor and treasurer of the county wherein the property is located; and will cause annual millage to be levied against such established valuations for the purposes stated;

(4) That all persons desiring to object to the proceedings, to the proposed base valuations, or to any other thing or matter in connection with the proceedings, must file written objections with the board stating clearly the basis of the objection before the time of the hearing, or all objections will be deemed waived. [1985 c 469 § 84; 1973 1st ex.s. c 195 § 123; 1961 c 131 § 7.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.070 Written objections—Filing—Grounds—Waiver. Any person, owner or reputed owner having any interest in any property against which the board seeks to make a service and benefit charge under this chapter, may object thereto. All such objections must be in writing and filed with the board before the hearing is commenced upon the roll containing such properties and must state clearly the grounds of such objection. Objections not made within this time and in this manner shall be deemed conclusively to have been waived. [1961 c 131 § 8.]

85.32.080 Additional roll due to omitted property or changed conditions. The board shall from time to time examine the properties within and without said district, and if it finds tentatively that property, including improvements thereon, has been omitted from the existing roll, or conditions have changed so that there are new properties or additional properties receiving benefit and service from the facilities of the district without charge, it shall cause from time to time an additional roll of such property to be filed with it and shall proceed in the same manner as provided in this chapter where the board causes property roll to be filed with it. [1961 c 131 § 9.]

85.32.090 Certification and filing of roll—Additional, supplemental roll supplements original. When any roll or additional or supplemental roll is adopted by the board, a copy thereof shall be certified to and filed with the auditor, the assessor and the treasurer of the county wherein the property contained on said roll is situated. Where the roll is a supplemental or additional roll, it shall supplement the original roll. [1961 c 131 § 10.]

85.32.100 Reexamination of properties—Supplemental roll—Certification and filing. The board may at any time reexamine the properties on any roll, and upon request of an owner shall do so, and if it is found that the condition of such property or properties has changed so that justly such property should be eliminated from any rolls on file, or the base against which dollar rate is levied should be lowered, it shall so determine and make a supplemental roll with reference to such property or properties. When adopted by it, the board shall certify and file a copy thereof with the auditor, assessor and treasurer of the county wherein the property is situated, and such officer shall alter and change the existing rolls accordingly. [1973 1st ex.s. c 195 § 124; 1961 c 131 § 11.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.110 Roll is base for benefits against which levy made. The roll certified to the county officers as in this chapter provided, and any modification thereof as provided, shall serve as the base of benefits as to land, buildings and improvements furnished service and benefit by the systems of the district against which valuations dollar rates shall be levied and collected in the same manner as general taxes from time to time for the continuing functioning of the district and its systems. The dollar rate shall be levied in the manner required by law for dollar rate levies by drainage districts. [1973 1st ex.s. c 195 § 125; 1961 c 131 § 12.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.120 Levy for outstanding indebtedness. If any property outside of the territorial limits of the district is placed upon a roll as finally adopted, and at the time such property becomes subject to charge for service and benefit from the district's system, there is an existing outstanding indebtedness owing by the district, the board shall make a separate estimate of the revenue required to be raised to pay or apply upon such indebtedness until it is extinguished, and it shall proceed and certify the same as hereinabove provided, and no dollar rate for raising revenue to extinguish such indebtedness shall be included in the levies made against any properties lying outside of the territorial limits of said district.

When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit same to the funds of such district. [1973 1st ex.s. c 195 § 126; 1961 c 131 § 13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.130 Emergency warrants in excess of estimates. In the case of an emergency or disaster not in contemplation at the time of making the annual estimate of costs and declared to be such by resolution of the board, the board may incur additional obligations and issue valid warrants therefor in excess of such estimate in the manner provided by law for issuance of warrants by drainage districts and the servicing thereof, and all such warrants so issued shall be valid as shown upon the then current roll of said district filed with the county auditor. [1961 c 131 § 14.]

85.32.140 Chapter exclusive method—Concurrent use of other method to extinguish prior indebtedness—Special assessment bonds. Any district choosing to operate under this chapter shall not use the processes provided for raising revenue under any other law: *Provided*, That if for any reason it is deemed more just and advisable by the board, any such other method or process for raising revenue as provided by law may be used concurrently against properties solely within the territorial limits of the district for the sole purpose of extinguishing indebtedness incurred before the district adopts the procedure of this chapter, in which event no funds raised under this chapter shall be used to pay such prior indebtedness. However, when a drainage district issues special assessment bonds or notes after June 1, 1986, the process of raising revenue related to the bonds or notes shall be as specified in chapter 85.38 RCW. [1986 c 278 § 39; 1961 c 131 § 15.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.32.150 Owners of extraterritorial lands on roll are electors and may be commissioners—Corporations. Whenever lands, or lands with improvements thereon, lying outside of the existing territorial limits of such district are ultimately placed upon the assessment roll of such district in the manner provided by this chapter so that such lands are subject to maintenance benefits as provided, the owner of such land shall be deemed to be an elector within such district, and shall have the same right to participate in all district affairs and to vote upon all matters submitted to the electors of said district, including that of electing or becoming commissioners for the district, all in the manner provided for voting and elections under existing law pertaining to drainage districts. If such owner is a corporation, one of its duly constituted officers shall be deemed to have the right as an elector to vote on behalf of such corporation. [1961 c 131 § 16.]

85.32.160 Roll proceedings are conclusive—Injunction upon limited grounds. Whenever any roll shall have been adopted by the board, the regularity, validity and correctness of the proceedings relating thereto shall be conclusive upon all parties and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll as provided in RCW 85.18.050 and appealing from the action of the board in confirming such roll in the manner

and within the time in this chapter provided. No proceeding of any kind, except proceedings had through the process of appeal as in this chapter provided, shall be commenced or prosecuted or may be maintained for the purpose of defeating or contesting any assessment or charge made through levies under this chapter, or the sale of any property to pay such charges: *Provided*, That a suit in injunction may be brought to prevent collection of charges or assessments or sale of property thereunder upon the following grounds and no other: (1) That the property charged or about to be sold does not appear upon the district roll filed with the county auditor, or (2) the charge or assessment has been paid. [1961 c 131 § 17.]

85.32.170 Judicial review—Petition to superior court. The decision of the board upon any objection made within the time and in the manner prescribed in this chapter may be reviewed by the superior court of the county wherein the property in question is located. Any person aggrieved must file his petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and he shall serve a copy thereof upon the board. The petition shall describe the property in question, set forth the written objections which were made to the decision, give the date of filing of such objections, and shall be signed by such party or someone in his behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this section. [1961 c 131 § 18.]

85.32.180 Judicial review—Filing of transcript, objections, resolution—Filing fees—No bond required—Notice of hearing and trial. Within ten days after the filing of such petition for review, the board, unless the court shall grant additional time, shall file with the clerk of such court its certified transcript containing such portion of the roll as is subject to review, any written objections thereto filed with the board by the petitioner before such roll was adopted, and a copy of the resolution adopting the roll. The filing fee shall be a cost recoverable by petitioner against the district.

The clerk of the court shall charge the same filing fees for petitions for review as in other civil actions. The appellant need not file any bond to cause review to be had by the superior court. The court shall, on motion of either party to the cause, with notice to the other party, set the same for hearing and trial without jury at the earliest time available. [1961 c 131 § 19.]

85.32.190 Judicial review—Scope of trial. At the trial the court shall determine whether the board has acted within its discretion and has correctly construed and applied the law. If it finds that it has, the findings and decision of the board shall be affirmed; otherwise it shall be reversed or modified. The judgment of the court may change, confirm, correct, or modify the values of the property in question as shown upon the roll, and a

certified copy thereof shall be filed with the county auditor, who shall change, modify or correct as and if required. [1961 c 131 § 20.]

85.32.200 Judicial review—Appeal to supreme court or court of appeals. An appeal shall lie to the supreme court or the court of appeals from the superior court as in other civil cases: *Provided*, That such appeal must be taken within fifteen days after the date of entry of the judgment of the superior court. The supreme court or the court of appeals on such appeal may change, confirm, correct or modify the values of the property in question as shown upon the roll. A certified copy of any judgment of the supreme court or the court of appeals shall be filed with the county auditor having custody of such roll, who shall thereupon change, modify, or correct such roll in accordance with such decision, if required. [1971 c 81 § 169; 1961 c 131 § 21.]

85.32.210 Levies are for continuous benefits. The dollar rate levy returns collected from time to time under this chapter are solely assessments for benefits received continuously by the benefited properties, calculated in the manner specified in this chapter as a just and equitable way for all benefited property to share the expense of such required service. [1973 1st ex.s. c 195 § 127; 1961 c 131 § 22.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

85.32.220 Annual estimate of costs. The board of any drainage district proceeding under this chapter shall, on or before the first day of November of each year, make an estimate of the costs reasonably anticipated to be required. [1961 c 131 § 23.]

85.32.900 Powers and duties of chapter are supplemental. The rights, powers and duties granted and imposed by this chapter are supplemental and in addition to any existing rights, powers and duties of drainage districts established under this title. [1961 c 131 § 24.]

85.32.910 Severability—1961 c 131. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 131 § 25.]

Chapter 85.36

POWERS OF SPECIAL DISTRICTS

(Formerly: Consolidation of districts)

Sections	
85.36.005	Certain powers and rights governed by chapter 85.38 RCW.
85.36.025	Special assessments—Budgets—Alternative methods.
85.36.040	Special assessment bonds.
85.36.050	Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation.

Special district creation and operation: Chapter 85.38 RCW.

85.36.005 Certain powers and rights governed by chapter 85.38 RCW. Consolidated diking districts, drainage districts, diking improvement districts, and drainage improvement districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 35.]

Severability—1985 c 396: See RCW 85.38.900.

85.36.025 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which consolidated diking districts, drainage districts, diking improvement districts, and/or drainage improvement districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which consolidated diking districts, drainage districts, diking improvement districts, and/or drainage improvement districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 28.]

Severability—1985 c 396: See RCW 85.38.900.

85.36.040 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 27.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.36.050 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Consolidated diking districts, drainage districts, diking improvement districts, and/or drainage improvement districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 15.]

Severability—1986 c 278: See note following RCW 36.01.010.

Chapter 85.38

SPECIAL DISTRICT CREATION AND OPERATION

Sections	
85.38.005	Purpose.
85.38.010	Definitions.
85.38.020	Establishment of special districts—Petition or resolution—Contents.
85.38.030	Investigation of proposed boundaries and districts—Report.
85.38.040	Proposed special districts—Public hearing—Notice.
85.38.050	Public hearing—Elections.
85.38.060	Elections—Notice—Costs.
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85.38.080	Governing body—Bond.
85.38.090	Governing body—Reduction in size.
85.38.100	General elections.
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85.38.120	Elections—Auditor's assistance—Notice—Auditor's costs.

85.38.130	Election officials—Duties—Voting hours—Challenged ballots—Absentee ballots.
85.38.140	Special district financing—Alternative method.
85.38.150	Special assessments—Valuation—Assessment zones—Criteria for assessments.
85.38.160	Systems of assessment—Hearing—Notice—Adoption of ordinance—Appeals—Review—Emergency assessment.
85.38.170	Budgets—Special assessments—Notice—Delinquent special assessments—Collection fee.
85.38.180	Special districts—Powers.
85.38.190	Construction of improvements—When public bidding not required—Use of district employees or volunteers.
85.38.200	Annexation of contiguous territory—Procedures.
85.38.210	Consolidation of contiguous districts—Procedures.
85.38.215	Transfer of territory from one special district to another.
85.38.220	Suspension of operations—Procedure—Reactivation.
85.38.230	Special assessment bonds authorized.
85.38.240	Special assessment bonds—Issuance—Terms.
85.38.250	Special assessment bonds—Guaranty fund.
85.38.260	Special assessment bonds—Refunding.
85.38.270	Special assessment bonds issued prior to July 1, 1986.
85.38.900	Severability—1985 c 396.

85.38.005 Purpose. The purpose of this chapter is to provide uniform and simplified procedures for the creation, elections, and operations of various special districts that provide diking, drainage, and flood control facilities and services. The legislature finds that it is in the public interest to clarify and standardize the laws relating to these special districts. [1985 c 396 § 1.]

85.38.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Governing body" means the board of commissioners, board of supervisors, or board of directors of a special district.

(2) "Owner of land" means the record owner of at least a majority ownership interest in a separate and legally created lot or parcel of land, as determined by the records of the county auditor, except that if the lot or parcel has been sold under a real estate contract, the vendee or grantee shall be deemed to be the owner of such land for purposes of authorizing voting rights. It is assumed, unless shown otherwise, that the name appearing as the owner of property on the property tax rolls is the current owner.

(3) "Qualified voter of a special district" means a person who is either: (a) A natural person who is a voter under general state election laws, registered to vote in the state of Washington for a period of not less than sixty days before the election, and the owner of land located in the special district for a period of not less than sixty days before the election; (b) a corporation or partnership that has owned land located in the special district for a period of not less than sixty days before the election; or (c) the state, its agencies or political subdivisions that own land in the special district or lands proposed to be annexed into the special district except that the state, its agencies and political subdivisions shall not be eligible to vote to elect a member of the governing

board of a special district. If land is owned as community property, both spouses may vote if otherwise qualified. If other multiple undivided interests exist in a lot or parcel, and no person owns a majority undivided interest, the owners of undivided interests at least equal to a majority interest may designate in writing which owner is eligible to vote. A corporation, partnership or governmental entity shall designate a natural person to exercise its voting powers. Except as provided in RCW 85.05.015 and 86.09.377, no owner of land may cast more than one vote, or have more than one vote cast for it, in a special district election.

(4) "Special district" means: (a) A diking district; (b) a drainage district; (c) a diking, drainage, and/or sewerage improvement district; (d) an intercounty diking and drainage district; (e) a consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or (f) a flood control district.

(5) "Special district general election" means the election of a special district regularly held on the second Tuesday of December in each odd-numbered year at which a member of the special district governing body is regularly elected. [1986 c 278 § 41; 1985 c 396 § 2.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.020 Establishment of special districts—Petition or resolution—Contents. The establishment of a special district may be initiated by either petition of the owners of property located within the proposed special district, or by resolution of the county legislative authority or authorities within which the proposed special district is located.

A petition calling for the creation of a special district, which is signed by at least ten owners of land located within the proposed district, shall be filed with the county legislative authority within which a proposed special district, or the largest portion of a special district, is located. If the proposed special district is proposed to be located within more than one county, the county legislative authority receiving the petitions shall notify the other county legislative authorities of the proposal. The petition shall set forth in general terms: (1) The objects sought by the creation of the special district; (2) the projects proposed to be completed by the special district that will accomplish these objects; (3) the boundaries of the proposed special district, which may be stated in terms of sections, townships, and ranges; and (4) any other matters deemed material by the petitioners. The jurisdiction of the county legislative authority to proceed with consideration of the creation of the proposed special district shall not be affected by the form of the petition or allegations on the petition. The petition shall be accompanied by proof of land ownership that is sufficient in the opinion of the county legislative authority to evidence the ownership of land by the petitioners within the proposed special district. A petition calling for the creation of a special district shall be accompanied by a bond of five thousand dollars to defray the costs incurred by the county, or counties, in considering the creation of the special district.

A resolution proposing the creation of a special district shall contain the same items as are required and permitted to be contained in a petition to create a special district. [1985 c 396 § 3.]

85.38.030 Investigation of proposed boundaries and districts—Report. Upon the filing of a valid petition or upon the adoption of the resolution, the county legislative authority shall direct the county engineer to investigate the proposed boundaries of the special district and the feasibility of the projects located in the county as proposed in the petition or resolution. The engineer shall report to the county legislative authority within ninety days of such direction on the proposed boundaries of the special district within the county and feasibility of that portion of the proposed project. If the proposed special district is located in more than one county, the county legislative authority of each county shall direct its county engineer to investigate and report on the proposal within its boundaries. [1985 c 396 § 4.]

85.38.040 Proposed special districts—Public hearing—Notice. The county legislative authority shall schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are feasible. If the engineers of each of the counties within which a proposed special district is located indicate that the proposed projects are feasible, the county legislative authorities shall schedule a joint public hearing on the proposed special district. The county legislative authority may, on its own initiative, schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are not feasible. The county legislative authorities of counties within which a proposed special district is located may, on their own initiative, schedule a joint public hearing on the proposed special district if one or more of the county engineers' reports indicate that the proposed projects are not feasible.

Notice of the public hearing shall be published and posted as provided in RCW 85.38.120 for notices of elections. Additional notice of the public hearing shall be published in the newspaper in general circulation within the proposed special district, which notice shall be purchased in the manner of a general advertisement, not to be included with legal advertisements or with classified advertisements. This additional notice shall be published at least twice, not more than twenty nor less than three days before public hearing. Additional notice shall be made as required in RCW 79.44.040.

The notice must contain the following: (1) The date, time, and place of the public hearing; (2) a statement that a particular special district is proposed to be created; (3) a general description of the proposed projects to be completed by the special district; (4) a general description of the proposed special district boundaries; and (5) a statement that all affected persons may appear and present their comments in favor of or against the creation of the proposed special district. [1985 c 396 § 5.]

85.38.050 Public hearing—Elections. The county legislative authority or authorities shall conduct the public hearing at the date, time, and place indicated in the notice. Public hearings may be continued to other dates, times, and places specified by the county legislative authority or authorities before the adjournment of the public hearing. Each county legislative authority may alter those portions of boundaries of the proposed special district that are located within the county, but if territory is added that was not described in the original proposed boundaries, an additional hearing on the proposal shall be held with notice being posted and published as provided in RCW 85.38.040.

After receiving the public testimony, the county legislative authority may cause an election to be held to authorize the creation of a special district if it finds:

- (1) That creation of the special district will be conducive to the public health, convenience and welfare;
- (2) That the creation of the special district will be of special benefit to a majority of the lands included within the special district; and
- (3) That the proposed improvements are feasible and economical, and that the benefits of these improvements exceed costs for the improvements.

If the proposed special district is located within two or more counties, the county legislative authorities may cause an election to be held to authorize the creation of the special district upon making the findings set forth in subsections (1) through (3) of this section.

The county legislative authority or authorities may also choose not to allow such an election to be held by either failing to act or finding that one or more of these factors are not met. [1985 c 396 § 6.]

85.38.060 Elections—Notice—Costs. The county legislative authority or authorities shall cause an election on the question of creating the special district to be held if findings as provided in RCW 85.38.050 are made. The county legislative authority or authorities shall designate a time and date for such election, which shall be one of the special election dates provided for in RCW 29.13.020, together with the site or sites at which votes may be cast. The persons allowed to vote on the creation of a special district shall be those persons who, if the special district were created, would be qualified voters of the special district as described in RCW 85.38.010. The county auditor or auditors of the counties within which the proposed special district is located shall conduct the election and prepare a list of presumed eligible voters.

Notices for the election shall be published and posted as provided in RCW 85.38.040. The special district shall be created if the proposition to create the special district is approved by a simple majority vote of the voters voting on the proposition and the special district may assume operations whenever the initial members of the governing body are appointed as provided in RCW 85.38.070.

Any special district created after July 28, 1985, may only have special assessments measured and imposed,

and budgets adopted, as provided in RCW 85.38.140 through 85.38.170.

If the special district is created, the county or counties may charge the special district for the costs incurred by the county engineer or engineers pursuant to RCW 85.38.030 and the costs of the auditor or auditors related to the election to authorize the creation of the special district pursuant to this section. Such county actions shall be deemed to be special benefits of the property located within the special district that are paid through the imposition of special assessments. [1985 c 396 § 7.]

85.38.070 Governing board—Terms of office—Election—Appointment—Vacancies—Qualifications. (1) Except as provided in RCW 85.38.090, each special district shall be governed by a three-member governing body. The term of office for each member of a special district governing body shall be six years and until his or her successor is elected and qualified. One member of the governing body shall be elected at the time of special district general elections and, each odd-numbered year for a term of six years beginning as provided in RCW 29.04.170 for assumption of office by elected officials of cities.

(2) The terms of office of members of the governing bodies of special districts, who are holding office on July 28, 1985, shall be altered to provide staggered six-year terms as provided in this subsection. The member who on July 28, 1985, has the longest term remaining shall have his or her term altered so that the position will be filled at the December, 1991, special district general election; the member with the second longest term remaining shall have his or her term altered so that the position will be filled at the December, 1989, special district general election; and the member with the third longest term of office shall have his or her term altered so that the position will be filled at the December, 1987, special district general election.

(3) The initial members of the governing body of a newly created special district shall be appointed by the legislative authority of the county within which the special district, or the largest portion of the special district, is located. These initial governing body members shall serve until their successors are elected and qualified at the next special district general election held at least ninety days after the special district is established. At that election the first elected members of the governing body shall be elected. No primary elections may be held. Any voter of a special district may become a candidate for such a position by filing written notice of this intention with the governing body of the special district at least thirty, but not more than sixty, days before a special district general election. The names of all candidates for such positions shall be listed alphabetically. At this first election, the candidate receiving the greatest number of votes shall have a six-year term, the candidate receiving the second greatest number of votes shall have a four-year term, and the candidate receiving the third greatest number of votes shall have a two-year term of office. The initially elected members of a governing body shall take office immediately when qualified as defined

in RCW 29.01.135. Thereafter the candidate receiving the greatest number of votes shall be elected for a six-year term of office. Members of a governing body shall hold their office until their successors are elected and qualified, and assume office as provided in RCW 29.04.170.

(4) Whenever a vacancy occurs in the governing body of a special district, the legislative authority of the county within which the special district, or the largest portion of the special district, is located, shall appoint a district voter to serve until a person is elected, at the next special district election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in RCW 29.01.135.

If an election for the position which became vacant would otherwise have been held at this special district election, only one election shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29.01.135 and shall serve both the remainder of the unexpired term and the succeeding term. A vacancy occurs upon the death, resignation, or incapacity of a governing body member or whenever the governing body member ceases being a qualified voter of the special district.

(5) An elected or appointed member of a special district governing body must be a qualified voter of the special district: *Provided*, That the state, its agencies and political subdivisions, or their designees under RCW 85.38.010(3) shall not be eligible for election or appointment. [1987 c 298 § 2; 1986 c 278 § 42; 1985 c 396 § 8.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.080 Governing body—Bond. Each member of a governing body of a special district, whether elected or appointed, shall enter into a bond, payable to the special district. The bond shall be in the sum of not less than one thousand dollars nor more than five thousand dollars, as determined by the county legislative authority of the county within which the special district, or the largest portion of the special district, is located. The bond shall be conditioned on the faithful performance of his or her duties as a member of the governing body of the special district and shall be filed with the county clerk of the county within which the special district, or the largest portion of the special district, is located. [1987 c 298 § 3; 1985 c 396 § 9.]

85.38.090 Governing body—Reduction in size. (1) Whenever the governing body of a special district has more than three members, the governing body shall be reduced to three members as of January 1, 1986, by eliminating the positions of those district governing body members with the shortest remaining terms of office. The remaining three governing body members shall have staggered terms with the one having the shortest remaining term having his or her position filled at the 1987 special district general election, the one with the

next shortest remaining term having his or her position filled at the 1989 special district general election, and the one with the longest remaining term having his or her position filled at the 1991 special district general election. If any of these remaining three governing body members have identical remaining terms of office, the newly calculated remaining terms of these persons shall be determined by lot with the county auditor who assists the special district in its elections managing such lot procedure. The newly established terms shall be recorded by the county auditor.

(2) However, whenever five or more special districts have consolidated under chapter 85.36 RCW and the consolidated district has five members in its governing body on July 28, 1985, the consolidated district may adopt a resolution retaining a five-member governing body. At any time thereafter, such a district may adopt a resolution and reduce the size of the governing body to three members with the reduction occurring as provided in subsection (1) of this section, but the years of the effective dates shall be extended so that the reduction occurs at the next January 1st occurring after the date of the adoption of the resolution. Whenever a special district is so governed by a five-member governing body, two members shall be elected at each of two consecutive special district general elections, and one member shall be elected at the following special district general election, each to serve a six-year staggered term. [1985 c 396 § 10.]

85.38.100 General elections. General elections shall be held in each special district on the second Tuesday in December in each odd-numbered year. The auditor of the county within which a special district, or the largest portion of a special district, is located may provide for special elections whenever necessary. [1985 c 396 § 11.]

85.38.110 Presumed eligible voters' list—Notice of requirements of voting authority—Copy of voter's list to county auditor. A list of presumed eligible voters shall be prepared and maintained by each special district. The list shall include the assessor's tax number for each lot or parcel in the district, the name or the names of the owners of such lots and parcels, the extent of the ownership interest of such persons, and if such persons are natural persons, whether they are known to be registered voters in the state of Washington. Whenever such a list is prepared, the district shall attempt to notify each owner of the requirements necessary to establish voting authority to vote. Whenever lots or parcels in the district are sold, the district shall attempt to notify the purchasers of the requirements necessary to establish voting authority. Each special district shall provide a copy of this list, and any revised list, to the auditor of the county within which all or the largest portion of the special district is located. [1985 c 396 § 12.]

85.38.120 Elections—Auditor's assistance—Notice—Auditor's costs. The auditor of the county within which a special district, or the largest portion of a special district, is located shall assist such special district

with its elections as provided in this section. The county auditor shall both publish and post notices for such elections. Notices shall be posted in at least four conspicuous public places within the special district at least two weeks before the election. Notices shall also be published in a newspaper of general circulation in the special district at least once not more than ten nor less than three days before the election. The notices shall describe the election, give its date and times to be held, and indicate the election site or sites in the special district where ballots may be cast. All costs of the county auditor incurred related to such elections shall be reimbursed by the special district. A special district may also contract with the county auditor to staff the voting site during the election or contract with the county auditor to conduct the election pursuant to RCW 29.36.120. [1985 c 396 § 13.]

85.38.130 Election officials—Duties—Voting hours—Challenged ballots—Absentee ballots. The governing body of each special district shall appoint three voters of the special district, who may be members of the governing body, to act as election officials, unless the special district contracts with the county auditor to staff the election site. The election officials shall distribute a ballot or ballots to each voter of the special district who arrives at the voting place during the hours for the election on the day of the election and requests a ballot. Ballots shall also be provided to those persons arriving at the polling place during the hours for the election on the day of the election who present documents or evidence sufficient to establish their eligibility to vote. A person arriving at the polling place at such times who demands a ballot, but who fails to present documents or evidence which in the opinion of the election officials is sufficient to establish eligibility to vote, shall be given a ballot clearly marked as "challenged" and shall be allowed to vote. Each challenged ballot shall be numbered consecutively and a list of such persons and their ballot numbers shall be made.

The governing body of each special district shall designate those hours from 7 a.m. to 8 p.m. during which the election shall be held: *Provided*, That at least two consecutive hours must be designated. When the election is over, the election officials shall secure the ballots and transport the ballots to the county auditor's office by noon of the day following the election. The auditor may, at his or her discretion, station a deputy auditor or auditors at the election site who shall observe the election and transport the ballots to the auditor's office. The auditor shall count the ballots and certify the count of votes for and against each measure and for each candidate appearing on the ballot. A separate count shall be made of any challenged ballots. A challenged ballot shall be counted as a normal ballot if documents or evidence are supplied to the auditor before 4:00 p.m. on the day after the election that, in the opinion of the auditor, are sufficient to establish the person's eligibility to vote.

Additionally, voting by absentee ballot shall be allowed in every special district. A request for an absentee ballot may be made by an eligible voter by mail or in person to the county auditor who supervises the special

district elections. An absentee ballot shall be provided to each voter of a special district requesting such a ballot under this section. A person requesting such a ballot may present information establishing his or her eligibility to vote in such a special district. The auditor shall provide an absentee ballot to each person requesting an absentee ballot who is either included on the list of presumed eligible voters or who submits information which, in the auditor's opinion, establishes his or her eligibility to vote. The names of these persons so determined to be eligible to vote shall be added to the list of presumed eligible voters for the appropriate special district. The request for an absentee ballot must be made no more than forty-five days before the election. To be valid, absentee ballots must be postmarked on or before the day of the election and mailed to the county auditor. [1985 c 396 § 14.]

85.38.140 Special district financing—Alternative method. The process by which budgets are adopted, special assessments are measured and imposed, and assessment zones are established, as provided in RCW 85.38.140 through 85.38.170, shall constitute an alternative optional method of financing special districts. A special district in existence prior to July 28, 1985, may conform with RCW 85.38.140 through 85.38.170 when its governing body adopts a resolution indicating its intention to conform with such laws. Whenever such a resolution is adopted, or a new special district is created on or after July 28, 1985, RCW 85.38.140 through 85.38.170 shall be the exclusive method by which the special district measures and imposes special assessments and adopts its budget. The governing body of a special district that was created before July 28, 1985, and which operates under RCW 85.38.140 through 85.38.170, may adopt a resolution removing the special district from operating under RCW 85.38.140 through 85.38.170, and operate under alternative procedures available to the special district. A county may charge a special district for costs the county incurs in establishing a system or systems of assessment for the special district pursuant to RCW 85.38.140 through 85.38.170. [1985 c 396 § 15.]

85.38.150 Special assessments—Valuation—Assessment zones—Criteria for assessments. (1) Special district special assessments shall be imposed only on real property within the district that uses or will use the special district's facilities or receives or will receive special benefits from the special district's operations and facilities. Both privately owned and publicly owned real property, including real property owned by the state, is subject to these special assessments. Mobile homes located on real property within a special district shall be considered an improvement to the real property for purposes of imposing special assessments.

(2) Special assessments imposed upon real property, other than improvements, shall be a function of the dollar value of benefit or use per acre and the assessment zone in which the real property is located. Special assessments imposed upon an improvement shall be a function of the dollar value of benefit or use assigned to

the type or class of improvements and the assessment zone in which the improvement is located.

(3) Assessment zones shall be established in which each zone reflects a different relative ratio of benefit or use that the real property within such a zone receives, or will receive, from the special district's operations and facilities. That real property receiving the greatest benefits, or which uses the special district's facilities to the greatest extent, shall be placed into class No. 1 and assigned a value of one hundred percent; that real property receiving the next greatest benefits, or which uses the special district's facilities to the next greatest extent, shall be placed into class No. 2 and assigned a lower percentage value; and so on, extending to the class of least benefits or use. That real property receiving no benefits or use shall be designated "nonbenefit." If all real property in the special district is found to have the same relative ratio of benefit or use, a single assessment zone may be established.

(4) Any one or more of the following criteria shall be used in measuring the manifest degrees or ratios of benefit or use: (a) Proximity to the special district's facilities; (b) height above or below dikes and levees; (c) easier accessibility; (d) facility of drainage; (e) minimization of flood or inundation damage; (f) actual flood protection; (g) use of the special district's facilities; and (h) any other criteria established by the county under RCW 85.38.160 that measure manifest degrees of benefit or use from the special district's facilities and operations.

(5) Special assessments may be imposed to pay for the construction, repair, and maintenance of special district facilities and for special district operations. Administrative and operational costs of the special district shall be proportionally included in these special assessments. [1985 c 396 § 16.]

85.38.160 Systems of assessment—Hearing—Notice—Adoption of ordinance—Appeals—Review—Emergency assessment. (1) The county within which each special district is located shall establish a system or systems of assessment for the special district as provided in this section. A differing system of assessment shall be established for different classes of facilities that a special district provides or will provide, including a separate system of assessment for diking and drainage facilities if both classes of facilities are provided. Whenever a special district is located in more than one county, the county within which the largest portion of the special district is located shall establish the system or systems of assessment for the entire special district. A system of assessment shall include assessment zones, the acreage included in each assessment zone, a dollar value of benefit or use per acre, and various classes or types of improvements together with a dollar value of benefit or use for an improvement included in each of the classes or types of improvements. The county shall establish which improvements shall be subject to special assessments and shall establish one or more types or classes of such improvements.

(2) The engineer of the county shall prepare a preliminary system or systems of assessment for each special district. Each system of assessment that is prepared for a special district shall be designed to generate a total of one thousand dollars in revenue for the special district.

The preliminary system or systems of assessment shall be filed with the county legislative authority. A public hearing on the preliminary system or systems of assessment shall be held by the county legislative authority. Notice of the public hearing shall be published in a newspaper, in general circulation in the special district, for two consecutive weeks with the final notice being published not less than fourteen, nor more than twenty-one days, before the public hearing. Notice shall also be mailed to each owner or reputed owner, as shown on the assessor's tax rolls, of each lot or parcel subject to such assessments. The mailed notice shall indicate the amount of assessment on the lot or parcel that, together with all other assessments in the system of assessment, would raise one thousand dollars. The mailed notice shall indicate that this assessment amount is not being imposed, but is a hypothetical assessment that, if combined with all other hypothetical assessments in the system of assessment, would generate one thousand dollars, and that this hypothetical assessment is proposed to be used to establish a system or systems of assessment for the special district. Where a special district currently is imposing special assessments and a property owner's property is subject to these special assessments, the mailed notice to this property owner also shall use the hypothetical special assessment in conjunction with the total special assessments imposed by the special district in that year to provide a comparison special assessment value to the property owner. This notice shall indicate that the comparison special assessment value is not being imposed, and should be considered for comparative purposes only. Where a special district is not currently imposing special assessments, the mailed notice may include, if deemed appropriate by the county engineer and if such figures are available, an estimated special assessment value for the property owner's property using this hypothetical special assessment in conjunction with special district-wide level of special assessments that possibly would be imposed in the following year. Where a county is imposing rates and charges for storm water or surface water control facilities pursuant to chapters 36.89 or 36.94 RCW, the county shall credit such rates and charges with assessments imposed under this section by a special district to fund drainage facilities and the maintenance of drainage facilities.

(3) The county legislative authority shall hold a public hearing on the preliminary system or systems of assessment on the day specified in the notices. Persons objecting to the preliminary system or systems of assessment may present their objections at this public hearing, which may be continued if necessary. The county legislative authority shall adopt an ordinance finalizing the system or systems of assessment after making any changes that in its discretion are necessary. The county

legislative authority shall have broad discretion in establishing systems of assessment. The decision of the county legislative authority shall be final, except for appeals. Any person objecting to the system or systems of assessment must appeal such decision to the superior court of the county within which all, or the largest portion, of the special district is located within twenty days of the adoption of the ordinance.

(4) The system or systems of assessment of each special district shall be reviewed by the county engineer and finalized by the county legislative authority at least once every four years. A system or systems of assessment shall be finalized on or before the first of September in the year that it is finalized. The legislative authority of a county that is responsible for establishing a system or systems of assessment for more than one special district may, at its option, stagger the initial finalization of such systems of assessment for different special districts over a period of up to four years. Assessments shall be collected in special districts pursuant to the district's previous system of assessment until the system or systems of assessment under this chapter is finalized under this section.

(5) New improvements shall be noted by the special district as they are made and shall be subject to special assessments in the year after the improvement is made.

(6) The county legislative authority, upon request by a special district, may authorize the special district to impose and collect emergency assessments pursuant to the special district's system or systems of assessment whenever the emergent protection of life or property is necessary. [1985 c 396 § 17.]

85.38.170 Budgets—Special assessments—Notice—Delinquent special assessments—Collection fee. Budgets for each special district shall be adopted, and special assessments imposed, annually for the succeeding calendar year. On or before December 1st of each year, the governing body of the special district shall adopt a resolution approving a budget for the succeeding year and special assessments sufficient to finance the budget. A copy of the resolution and the budget shall be forwarded immediately to the county legislative authority of the county or counties within which the special district is located and to the treasurer of the county or counties in which the special district is located. Special assessments necessary to generate funds for this budget shall be imposed pursuant to the system or systems of assessment established by the county. Special assessments shall be collected by the county treasurer or treasurers within which the special district is located. Notice of the special assessments due may be included on the notice of property taxes due, may be included on a separate notice that is mailed with the notice of property taxes due, or may be sent separately from the notice of property taxes due. Special assessments shall be due at the same time property taxes are due and shall constitute liens on the land or improvements upon which they are imposed. Delinquent special assessments shall be foreclosed in the same manner, and subject to the

same time schedules, interest, and penalties as delinquent property taxes. County treasurers may impose a fee for collecting special assessments not to exceed one percent of the dollar value of special assessments collected. [1985 c 396 § 18.]

85.38.180 Special districts—Powers. A special district may:

(1) Engage in flood control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to prevent inundation or flooding from rivers, streams, tidal waters or other waters. Such facilities include dikes, levees, dams, banks, revetments, channels, canals, and other works, appliances, machinery, and equipment.

(2) Engage in drainage control, storm water control, and surface water control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to control and treat storm water, surface water, and flood water. Such facilities include drains, ditches, canals, nonsanitary sewers, pumps, and other works, appliances, machinery, and equipment.

(3) Take actions necessary to protect life and property from inundation or flow of flood waters, storm waters, or surface waters.

(4) Acquire, purchase, condemn by power of eminent domain pursuant to chapters 8.08 and 8.25 RCW, or lease, in its own name, necessary property, property rights, facilities, and equipment.

(5) Sell or exchange surplus property, property rights, facilities, and equipment.

(6) Accept funds and property by loan, grant, gift, or otherwise from the United States, the state of Washington, or any other public or private source.

(7) Hire staff, employees, or services, or use voluntary labor.

(8) Sue and be sued.

(9) Cooperate with or join the United States, the state of Washington, or any other public or private entity or person for district purposes.

(10) Enter into contracts.

(11) Exercise any of the usual powers of a corporation for public purposes. [1985 c 396 § 19.]

85.38.190 Construction of improvements—When public bidding not required—Use of district employees or volunteers. Any proposed improvement or part thereof, not exceeding five thousand dollars in cost, may be constructed by district employees: *Provided*, That this shall not restrict a special district from using volunteer labor and equipment on improvements, and providing reimbursement for actual expenses. [1987 c 298 § 4; 1986 c 278 § 50.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.200 Annexation of contiguous territory—Procedures. (1) Territory that is contiguously located to a special district may be annexed by the special district

as provided in this section under the petition and election, resolution and election, or direct petition method of annexation.

(2) An annexation under the election method may be initiated by the filing of a petition requesting the action that is signed by at least ten owners of property in the area proposed to be annexed or the adoption of a resolution requesting such action by the governing body of the special district. The petitions shall be filed with the governing body of the special district that is requested to annex the territory. An election to authorize an annexation initiated under the petition and election method may be held only if the governing body approves the annexation. An annexation under either election method shall be authorized if the voters of the area proposed to be annexed approve a ballot proposition favoring the annexation by a simple majority vote. The annexation shall be effective when results of an election so favoring the annexation are certified by the county auditor or auditors. The election, notice of the election, and eligibility to vote at the election shall be as provided for the creation of a special district.

(3) An annexation under the direct petition method of annexation may be accomplished if the owners of a majority of the acreage proposed to be annexed sign a petition requesting the annexation, and the governing body of the special district approves the annexation. The petition shall be filed with the governing body of the special district. The annexation shall be effective when the governing body approves the annexation.

(4) Whenever a special district annexes territory under this section, the exclusive method by which the special district measures and imposes special assessments upon real property within the entire enlarged area shall be as set forth in RCW 85.38.150 through 85.38.170. [1986 c 278 § 8.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.210 Consolidation of contiguous districts—Procedures. Two or more special districts that are contiguously located with each other, or which occupy all or part of the same territory, may consolidate as provided in this section. The consolidation shall result in the creation of a flood control district.

A consolidation may be initiated by: (1) The filing of a petition requesting the action that is signed by eligible voters of each special district who constitute at least ten percent of the eligible voters of the special district, or who own at least a majority of the acreage in the special district; or (2) the adoption of a resolution requesting such action by the governing body of each special district. The petitions shall be filed with, and the resolutions shall be submitted to, the county legislative authority of the county within which all or the largest portion of the special districts is located. The auditor of the county, or auditors of the counties, within which these districts are located shall authenticate the signatures on the petitions and certify the results. An election to authorize the consolidation shall be held not more than one hundred eighty days after the date of the filing of the resolutions, or the determination that sufficient

valid signatures are included on the petition from the voters of each of the special districts.

The consolidation shall be authorized if voters in each of the special districts approve a ballot proposition favoring the consolidation by a simple majority vote. Members of the governing body of the consolidated special district shall be selected as provided in RCW 85.38-.070 for a newly created special district and the consolidation shall be effective when these initial members of the governing body are so appointed.

All moneys, rights, property, assets and liabilities of the consolidating special districts shall vest in and become the obligation of the new consolidated special district, except that any indebtedness of a consolidating special district shall remain an indebtedness of the original consolidating special district and lands within the original consolidating special district. The governing body of the new consolidated special district shall impose special assessments on lands in the original consolidating special district to redeem this indebtedness. However, the new consolidated special district may issue funding or refunding bonds or notes and fund or refund such indebtedness. The new consolidated special district may continue imposing special assessments pursuant to the various systems of assessment used by the original consolidating special districts, or may establish a new system or systems of assessment in all or part of the new consolidated special district to finance its operations. [1986 c 278 § 9.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.215 Transfer of territory from one special district to another. Territory that is located in one special district may be transferred from that special district to another special district as provided in this section, if a portion of this territory is coterminous with a portion of the boundaries of the special district to which it is transferred. Such a transfer shall be accomplished using the procedures in RCW 85.38.200 for annexing territory, except that the governing body of both special districts must approve the transfer and make findings that the transfer is in the public interest and that the special district to which the territory is transferred is better able to provide the activities and facilities serving the territory than the special district from which the territory is transferred.

Property in the territory so transferred shall remain liable for any special assessments of the special district from which it was transferred, if the special assessments are associated with bonds or notes used to finance facilities serving the property, to the same extent as if the transfer had not occurred.

A transfer of territory also may include the transfer of property, facilities, and improvements owned by one special district to the other special district, with or without consideration being paid. [1987 c 298 § 1.]

85.38.220 Suspension of operations—Procedure—Reactivation. Any special district may have its operations suspended as provided in this section. The process of suspending a special district's operations may

be initiated by: (1) The adoption of a resolution proposing such action by the governing body of the special district; (2) the filing of a petition proposing such action with the county legislative authority of the county in which all or the largest portion of the special district is located, which petition is signed by voters of the special district who own at least ten percent of the acreage in the special district or is signed by ten or more voters of the special district; or (3) the adoption of a resolution proposing such action by the county legislative authority of the county in which all or the largest portion of the special district is located.

A public hearing on the proposed action shall be held by the county legislative authority at which it shall inquire into whether such action is in the public interest. Notice of the public hearing shall be published in a newspaper of general circulation in the special district, posted in at least four locations in the special district to attract the attention of the public, and mailed to the members of the governing body of the special district, if there are any. After the public hearing, the county legislative authority may adopt a resolution suspending the operations of the special district if it finds such suspension to be in the public interest. When a special district is located in more than one county, the legislative authority of each of such counties must so act before the operations of the special district are suspended.

After holding a public hearing on the proposed reactivation of a special district that has had its operations suspended, the legislative authority or authorities of the county or counties in which the special district is located may reactivate the special district by adopting a resolution finding such action to be in the public interest. Notice of the public hearing shall be posted and published as provided for the public hearing on a proposed suspension of a special district's operations. The governing body of a reactivated special district shall be appointed as in a newly created special district.

No special district that owns drainage or flood control improvements may be dissolved unless the legislative authority of a county accepts responsibility for operation and maintenance of the improvements. [1986 c 278 § 10.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.230 Special assessment bonds authorized. A special district may issue special assessment bonds or notes to finance costs related to providing, improving, expanding, or enlarging improvements and facilities if the county legislative authority within which all or the major part of the special district is located authorizes the issuance of such bonds or notes. The decision of a county legislative authority authorizing or failing to authorize a proposed issue of special assessment bonds or notes constitutes a discretionary function, and shall not give rise to a cause of action against the county, county legislative authority, or any member of the county legislative authority. [1986 c 278 § 18.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.240 Special assessment bonds—Issuance—Terms. (1) Special assessment bonds and notes issued by special districts shall be issued and sold in accordance with chapter 39.46 RCW, except as otherwise provided in this chapter. The maximum term of any special assessment bond issued by a special district shall be twenty years. The maximum term of any special assessment note issued by a special district shall be five years.

(2) The governing body of a special district issuing special assessment bonds or notes shall create a special fund or funds, or use an existing special fund or funds, from which, along with any special assessment bond guaranty fund the special district has created, the principal of and interest on the bonds or notes exclusively are payable.

(3) The governing body of a special district may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on special assessment bonds or notes, and premiums on special assessment bonds or notes, if any. Such covenants may include, but are not limited to, depositing certain special assessments into a special fund or funds, and establishing, maintaining, and collecting special assessments which are to be placed into the special fund or funds. The special assessments covenanted to be placed into such a special fund or funds after June 11, 1986, only may include all or part of the new system of special assessments imposed for such purposes, pursuant to RCW 85.38.150 and 85.38.160. Special assessment bonds or notes issued after July 26, 1987, may not be payable from special assessments imposed under authorities other than those provided in chapter 85.38 RCW.

(4) A special assessment bond or note issued by a special district shall not constitute an indebtedness of the state, either general or special, nor of the county, either general or special, within which all or any part of the special district is located. A special assessment bond or note shall not constitute a general indebtedness of the special district issuing the bond or note, but is a special obligation of the special district and the interest on and principal of the bond or note shall be payable only from special assessments covenanted to be placed into the special fund or funds, and any special assessment bond guaranty fund the special district has created.

The owner of a special assessment bond or note, or the owner of an interest coupon, shall not have any claim for the payment thereof against the special district arising from the special assessment bond or note, or interest coupon, except for payment from the special fund or funds, the special assessments covenanted to be placed into the special fund or funds, and any special assessment bond guaranty fund the special district has created. The owner of a special assessment bond or note, or the owner of an interest coupon, issued by a special district shall not have any claim against the state, or any county within which all or part of the special district is located, arising from the special assessment bond, note, or interest coupon. The special district issuing the special assessment bond or note shall not be liable to the owner of any special assessment bond or note, or owner of any

interest coupon, for any loss occurring in the lawful operation of its special assessment bond guaranty fund.

The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each special assessment bond or note that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds or notes. [1987 c 298 § 5; 1986 c 278 § 19.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.250 Special assessment bonds—Guaranty fund. The governing body of a special district issuing special assessment bonds or notes may create and pay money into a special assessment bond guaranty fund to guaranty special assessment bonds and notes issued by the special district. A portion of the special assessments collected by a special district may be placed into its special assessment bond guaranty fund. [1986 c 278 § 20.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.260 Special assessment bonds—Refunding. A special district may issue funding or refunding special assessment bonds or notes to refund outstanding bonds or notes. Such funding or refunding bonds or notes shall be subject to the provisions of law governing other special assessment bonds or notes. [1986 c 278 § 21.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.270 Special assessment bonds issued prior to July 1, 1986. Special assessment bonds or notes issued by a special district prior to July 1, 1986, shall continue to be retired and be subject to the laws under which they were issued. [1986 c 278 § 22.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.900 Severability—1985 c 396. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 396 § 88.]

Title 86

FLOOD CONTROL

Chapters

- 86.05** Flood control districts—1935 act.
- 86.09** Flood control districts—1937 act.
- 86.12** Flood control by counties.
- 86.13** Flood control by counties jointly.
- 86.15** Flood control zone districts.
- 86.16** Flood plain management.
- 86.18** Flood control contributions.
- 86.24** Flood control by state in cooperation with federal agencies, etc.
- 86.26** State participation in flood control maintenance.

Reviser's note: Throughout this title the term "supervisor of hydraulics", and terms of similar import, have been revised to read "supervisor of flood control" since the powers and duties of the supervisor of hydraulics have devolved upon the supervisor of flood control through a chain of statutes as follows: 1921 c 7 §§ 66, 72; 1941 c 204 § 2; 1951 c 57 § 1; 1951 c 240; RCW 43.21.010 and chapter 86.26 RCW.

Also throughout this title the terms "director of conservation and development" and "department of conservation and development" have been changed to director or department of conservation since the name has been changed by 1957 c 215 §§ 19, 20, 21; RCW 43.17.010, 43.17.020, 43.21.010.

Department of conservation was abolished by 1967 c 242 § 20 [RCW 43.27A.180] and division of flood control transferred to department of water resources by 1967 c 242 § 8, RCW 43.27A.080. Department of water resources was abolished by 1970 ex.s. c 62 § 26 [former RCW 43.21A.300, since decodified] and its powers, duties and functions transferred to department of ecology by 1970 ex.s. c 62 § 6 [RCW 43.21A.060].

Assessment against state land: Chapter 79.44 RCW.

Authority of cities and towns to contract for dikes, levies, etc.: RCW 35.21.090.

Bridges, obstructions in navigable waters: Chapter 88.28 RCW.

Construction projects in state waters: Chapter 75.20 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

County roads and bridges: Chapter 36.81 RCW.

Diking and drainage: Title 85 RCW.

Draining lowlands by cities and towns: Chapter 35.56 RCW.

Easements over state lands: Chapter 79.36 RCW.

Elections: Title 29 RCW.

Facilitating recovery from Mt. St. Helens eruption scope of local government action: RCW 36.01.150.
scope of state agency action: RCW 43.01.210.

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Harbors, tidelands, tidewaters: State Constitution Art. 15 § 1 (Amendment 15), Art. 17.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Irrigation districts: Title 87 RCW.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Limitation of actions, special assessments: RCW 4.16.030.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Planning enabling act: Chapter 36.70 RCW.

Port districts: Title 53 RCW.

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

Reclamation districts: Title 89 RCW.

River and harbor improvements: Chapter 88.32 RCW.

Safeguarding open canals and ditches: RCW 35.43.040, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, 87.03.480, 87.03.526.

Soil and water conservation districts: Chapter 89.08 RCW.

Special election in cities, towns or districts to fill unexpired term: RCW 29.21.410.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

State reclamation act: Chapter 89.16 RCW.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

United States reclamation areas: Chapter 89.12 RCW.

Water rights: Title 90 RCW.

Waterways: Title 91 RCW.

Weather modification and control: Chapter 43.37 RCW, RCW 43.27A.080, 43.27A.180.

Chapter 86.05

FLOOD CONTROL DISTRICTS—1935 ACT

Sections

- 86.05.920 Repeal of RCW 86.05.010 through 86.05.910—Saving—Option to conform to chapter 86.09 RCW—Validation.

86.05.920 Repeal of RCW 86.05.010 through 86.05.910—Saving—Option to conform to chapter 86.09 RCW—Validation. Sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are each repealed: *Provided*, That districts heretofore established pursuant to said laws may continue to be operated and maintained as provided therein (except that the tort liability immunity provided for in section 32, chapter 160, Laws of 1935 and RCW 86.05.320 shall no longer apply); or may take such action as may be required to conform to the provisions of chapter 72, Laws of 1937 and chapter 86.09 RCW regulating the maintenance and operation of flood control districts to the same extent and to the same effect as if originally organized under said act: *Provided further*, That the organization of such districts and the validation of indebtedness heretofore incurred and the limitations upon indebtedness incurred after the effective date of this 1970 amendatory act shall be governed as follows:

(1) Each and all of the flood control districts heretofore organized and established under sections 1 through

79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby validated and declared to be duly existing flood control districts having their respective boundaries as set forth in their organization proceedings as shown by the files in the offices of the auditors of each of the counties affected;

(2) All debts, contracts, and obligations heretofore made by or in favor of, and all bonds or other obligations heretofore executed in connection with or in pursuance of attempted organization, and all other things and proceedings heretofore done or taken by any flood control district heretofore established, operated and maintained under sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby declared legal and valid and of full force and effect until such are fully satisfied and/or discharged.

(3) The limitation upon indebtedness prescribed in repealed section RCW 86.05.380 to an amount not exceeding one and one-half percent of the taxable property in such district without the assent of three-fifths of the voters therein and three percent of such property with such assent shall henceforth be to an amount not exceeding three-fourths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein and one and one-half percent of such property with such assent. The limitation upon indebtedness referred to in repealed section RCW 86.05.720 of one and one-half percent of the taxable property in such district shall henceforth be three-fourths of one percent of the value of the taxable property in such district. The term "value of the taxable property" as used in this paragraph shall have the meaning set forth in RCW 39.36.015. [1970 ex.s. c 42 § 40; 1967 c 164 § 8; 1965 c 26 § 16.]

Severability—1970 ex.s. c 42: See note following RCW 39.36.015.

Effective date—1970 ex.s. c 42: The effective date of the 1970 amendment to this section is November 1, 1970, see note following RCW 39.36.015.

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

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

Chapter 86.09

FLOOD CONTROL DISTRICTS—1937 ACT

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Deferral of special assessments: Chapter 84.38 RCW.

Special district creation and operation: Chapter 85.38 RCW.

86.09.001 Districts authorized—Purpose. Flood control districts may be created and maintained in this state, as herein provided, for the protection of life and property, the preservation of the public health and the conservation and development of the natural resources of the state of Washington. [1937 c 72 § 1; RRS § 9663E-1. Formerly RCW 86.08.005, part.]

86.09.004 Districts to provide control of water—Territory includable—Powers of district wholly within city or town. Such flood control districts shall be organized to provide for the ultimate necessary control of the entire part, or all, of the stream system of any stream or tributary, or for the protection against tidal or any bodies of water, within this state and may include all or part of the territory of any county and may combine the territory in two or more such counties, in which any of the

lands benefited from the organization and maintenance of a flood control district are situated.

A district established wholly within the boundaries of any city or town may also provide for the collection, control, and safe and suitable conveyance over and across the district, of intermittent surface and drainage water, originating within or without its boundaries, to suitable and adequate outlets. [1965 c 26 § 1; 1937 c 72 § 2; RRS § 9663E-2. Formerly RCW 86.08.005, part.]

86.09.010 Authorized purposes. Such flood control districts may be organized or maintained for any, or all, the following general purposes:

(1) The investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, channels, canals, banks, revetments and other works, appliances, machinery and equipment and property and rights connected therewith or incidental thereto, convenient and necessary to control floods and lessen their danger and damages.

(2) The cooperation with any agency or agencies of the United States and/or of the state of Washington in investigating and controlling floods and in lessening flood dangers and damages. [1937 c 72 § 4; RRS § 9663E-4. Formerly RCW 86.08.005, part.]

86.09.013 State school or other public lands includable. State granted school or other public lands of the state of Washington may be included within such flood control districts. [1937 c 72 § 5; RRS § 9663E-5. Formerly RCW 86.08.010, part.]

86.09.016 Interest in public lands considered as private property—State or public title not affected. All leases, contracts or other form of holding any interest in any state or public land shall be treated as the private property of the lessee or owner of the contractual or possessory interest therein: *Provided*, That nothing in this chapter or in any proceeding authorized thereunder shall be construed to affect the title of the state or other public ownership. [1937 c 72 § 6; RRS § 9663E-6. Formerly RCW 86.08.010, part.]

86.09.019 Federal lands includable. Lands of the federal government may be included within such districts in the manner and subject to the conditions, now or hereafter specified in the statutes of the United States. [1937 c 72 § 7; RRS § 9663E-7. Formerly RCW 86.08.010, part.]

86.09.020 Certain powers and rights governed by chapter 85.38 RCW. Flood control districts shall possess the authority and shall be created, district voting rights shall be determined, and district elections shall be held as provided in chapter 85.38 RCW. [1985 c 396 § 36.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.148 District's corporate powers. A flood control district created under this chapter shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all powers

that may now or hereafter be conferred by law. [1967 c 164 § 9; 1937 c 72 § 50; RRS § 9663E-50. Formerly RCW 86.08.260, part.]

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

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

86.09.151 General powers of districts. (1) Said flood control districts shall have full authority to carry out the objects of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, improve, repair, occupy, and sell real and personal property or any interest therein, either inside or outside the boundaries of the district, to enter into and perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of special assessments and in the manner herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this chapter.

(2) In addition to the powers conferred in this chapter and those in chapter 85.38 RCW, flood control districts may engage in activities authorized under RCW 36.61-.020 for lake management districts using procedures granted in this chapter and in chapter 85.38 RCW. [1986 c 278 § 52; 1937 c 72 § 51; RRS § 9663E-51. Formerly RCW 86.08.260, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.152 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

86.09.154 Sale, lease, use of water by district. Duly created flood control districts, when maintaining and operating flood control works, shall have authority incidental thereto to lease, acquire, construct, operate and maintain appropriate instrumentalities for the use and sale or lease of water for any and all beneficial purposes and for the drainage, diking, or irrigation of lands upon the payment to the district of the reasonable cost of such service on a semiannual or monthly toll basis. [1937 c 72 § 52; RRS § 9663E-52. Formerly RCW 86.08.260, part.]

86.09.157 Special assessment bonds authorized—Payment from income. Said flood control districts shall also have authority to issue and sell special assessment bonds or notes of the district in accordance with chapter 85.38 RCW. [1986 c 278 § 40; 1937 c 72 § 53; RRS § 9663E-53. Formerly RCW 86.08.790, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.160 Power of district to act for United States. Flood control districts created under the provisions of this chapter shall have authority to act as fiscal agent or other authority for the United States to make collections

of money for or on behalf of the United States or any federal agency thereof in connection with the operations of said district, whereupon said district and the county treasurer for said district shall be authorized to act and to assume the duties and liabilities incident to such action and the district board shall have full power to do any and all things required by any statute now or hereafter enacted in connection therewith and to do all things required by the rules and regulations now or that may hereafter be established by any department or agency of the state or federal government in regard thereto. [1937 c 72 § 54; RRS § 9663E-54. Formerly RCW 86.08.260, part.]

86.09.163 Contracts with United States or state—Supervision of works. The district board shall have authority to enter into any obligation or contract authorized by law with the United States or with the state of Washington for the supervision of the construction, for the construction, reconstruction, betterment, extension, purchase, operation or maintenance of the necessary works for the control of floods or for any other service furthering the objects for which said flood control district is created under the provisions of the law of the state of Washington or of the United States and all amendments or extensions thereof and the rules and regulations established thereunder. [1937 c 72 § 55; RRS § 9663E-55. Formerly RCW 86.08.260, part.]

86.09.166 Contracts with United States or state—Control, management of works—Contribution of funds. Flood control districts created under this chapter shall have authority to enter into contracts with, and/or contribute funds to, the United States or any agency thereof, or with, and/or contribute funds to, the state of Washington, under any act of congress or of the state of Washington now in force or hereafter enacted for the assumption of the control and management of the works for such period as may be designated in the contract, or other cooperative arrangement. [1937 c 72 § 56; RRS § 9663E-56. Formerly RCW 86.08.270, part.]

86.09.169 Contracts with United States or state—Bonds as security—Annual assessment and levy. In case a contract has been or shall be hereafter made between the district and the United States, or any agency thereof, or with the state of Washington, as herein provided, bonds of the district may be deposited with the United States, or any agency thereof, or with the state of Washington, as payment or as security for future payment at not less than ninety percent of the par value, the interest on said bonds to be provided for by assessment and levy as in the case of bonds of the district sold to private persons and regularly paid to the United States, or any agency thereof, or to the state of Washington, to be applied as provided in such contract and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment against the lands of the district, an amount sufficient to meet each year all payments accruing under the terms of any such contract. [1937 c 72

§ 57; RRS § 9663E-57. Formerly RCW 86.08.270, part.]

86.09.172 Contracts with United States or state—When submission to electors required. No contract, however, requiring the levy of assessments for more than one year shall be entered into by the district as above provided unless a proposition of entering into such a contract shall have first been submitted to the electors of the district as herein provided for the calling, noticing, conducting and canvassing of special district elections, and by said electors approved. [1937 c 72 § 58; RRS § 9663E-58. Formerly RCW 86.08.270, part.]

86.09.175 Installment contracts—Approval. Contracts entered into by districts for construction or for services or materials, may provide that payments shall be made in such monthly proportion of the contract price, as the board shall determine thereon, as the work progresses, or as the services or materials are furnished, on monthly estimates of the value thereof, approved by the state director. Before the district shall enter into any contract, the plans, specifications and form of contract therefor shall be approved by the state director. [1937 c 72 § 59; RRS § 9663E-59. Formerly RCW 86.08.280, part.]

86.09.178 Construction contracts—Public bids, procedure. Contracts for construction, or for labor or materials entering into the construction of any improvement authorized by the district shall be awarded at public bidding except as herein otherwise provided. A notice calling for sealed proposals shall be published in such newspaper or newspapers of general circulation as the board shall designate for a period of not less than two weeks (three weekly issues) prior to the day of the opening of the bids. Such proposals shall be accompanied by a certified check for such amount as the board shall decide upon, to guarantee a compliance with the bid and shall be opened in public at the time and place designated in the notice. The contract shall be awarded to the lowest and best responsible bidder: *Provided*, That the board shall have authority to reject any or all bids, in which event they shall readvertise for bids and, when no satisfactory bid is then received and with the written approval of the director, may proceed to construct the works by force account. [1965 c 26 § 2; 1937 c 72 § 60; RRS § 9663E-60. Formerly RCW 86.08.280, part.]

86.09.181 Contractor's bond. Any person, except the state of Washington and the United States, acting under the provisions of this chapter, to whom or to which a contract may have been awarded by the district for construction purposes, or for labor or materials entering therein when the total amount to be paid therefor exceeds one thousand dollars, shall enter into a bond to the state of Washington, with good and sufficient sureties, to be approved and filed with the state director, for one hundred percent of the contract price, conditioned for the faithful performance of said contract and with such further conditions as may be required by law. [1965 c 26

§ 3; 1937 c 72 § 61; RRS § 9663E-61. Formerly RCW 86.08.290, part.]

Contractor's bond: Chapter 39.08 RCW.

86.09.196 Construction in parts or units—Liability for assessment. The district shall have authority upon the adoption of a comprehensive plan of flood control with the approval of the state director to provide for the construction of the same partially and in parts or units and all the benefited lands in the district shall be liable for assessment to defray the costs of such partial construction or such parts or units until the entire plan has been completed and fully paid for. [1937 c 72 § 66; RRS § 9663E-66. Formerly RCW 86.08.310.]

86.09.202 Eminent domain—Authorized. The taking and damaging of property or rights therein or thereto by a flood control district to construct an improvement or to fully carry out the purposes of its organization are hereby declared to be for a public use, and any district organized under the provisions of this chapter, shall have and exercise the power of eminent domain to acquire any property or rights therein or thereto either inside or outside the operation of the district and outside the state of Washington, if necessary, for the use of the district. [1937 c 72 § 68; RRS § 9663E-68. Formerly RCW 86.08.260, part.]

86.09.205 Eminent domain—Procedure. Flood control districts exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of rights therein or thereto, by private corporations, except as otherwise expressly provided herein. [1937 c 72 § 69; RRS § 9663E-69. Formerly RCW 86.08.320, part.]

Eminent domain by private corporations generally: Chapter 8.20 RCW.

86.09.208 Eminent domain—Consolidation of actions—Separate verdicts. The district may at its option unite in a single action proceedings to condemn, for its use, property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, be consolidated upon motion of any interested party, into a single action. In such cases, the jury shall render separate verdicts for the different tracts of land. [1937 c 72 § 70; RRS § 9663E-70. Formerly RCW 86.08.320, part.]

86.09.211 Eminent domain—Damages, how determined—Judgment when damages exceed benefits. The jury, or court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: *Provided*, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the improvement for which the land is sought to be condemned, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it

shall appear by the verdict of findings, that the gross damages exceed said gross special benefits, judgment shall be entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over said benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the district. [1937 c 72 § 71; RRS § 9663E-71. Formerly RCW 86.08.330, part.]

86.09.214 Eminent domain—Judgment, when benefits equal or exceed damages. If it shall appear by the verdict that the gross special benefits equal or exceed the gross damages, judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered vesting the title to the property in the district. [1937 c 72 § 72; RRS § 9663E-72. Formerly RCW 86.08.330, part.]

86.09.217 Eminent domain—Right to levy on other land not affected. If the damages found in any condemnation proceedings are to be paid for from funds of the flood control district, no finding of the jury or court as to benefits or damages shall in any manner abridge the right of the district to levy and collect assessments for district purposes against the uncondemned lands situated within the district. [1937 c 72 § 73; RRS § 9663E-73. Formerly RCW 86.08.340, part.]

86.09.220 Eminent domain—Unpaid damages to be applied in satisfaction of levies—Deficiency assessments. The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded: *Provided*, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. [1937 c 72 § 74; RRS § 9663E-74. Formerly RCW 86.08.340, part.]

86.09.223 Eminent domain—Title and estate acquired. The title acquired by the district in condemnation proceedings shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. [1937 c 72 § 75; RRS § 9663E-75. Formerly RCW 86.08.340, part.]

86.09.226 Right of entry to make surveys and locate works. The district board and its agents and employees shall have the right to enter upon any land, to make surveys and may locate the necessary flood control works and the line for canal or canals, dike or dikes and other instrumentalities and the necessary branches and parts for the same on any lands which may be deemed necessary for such location. [1937 c 72 § 76; RRS § 9663E-76. Formerly RCW 86.08.350.]

86.09.229 Crossing road or public utility—Notice, plan, cost, etc. Whenever in the progress of the construction of the system of district improvement, it shall become necessary to construct a portion of such system across any public or other road or public utility, the district board shall serve notice in writing upon the public officers, corporation or person having charge of or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the board, within which plans for such crossing must be filed for approval in case the public officer, corporation or person controlling or owning such road or public utility desire to design and construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation or person shall, if they desire to construct such crossing, prepare and submit to the board for approval duplicate detailed plans and specifications for such crossing. Upon the return of such approved plans, the public officers, corporation or person controlling such road or public utility shall, within the time fixed by the board, construct such crossing in accordance with the approved plans. In case such public officers, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the district board shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the district, and only the actual cost of such improvement constructed in accordance with the approved plans shall be charged against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district shall be credited ratably on the assessments against the property on which the crossing is constructed if chargeable therewith, until the same is fully satisfied. [1965 c 26 § 5; 1937 c 72 § 77; RRS § 9663E-77. Formerly RCW 86.08.360.]

86.09.232 Right-of-way on state land, exception. The right-of-way is hereby given, dedicated and set apart to locate, construct and maintain district works over and through any of the lands which are now or may hereafter be the property of the state of Washington, except lands of said state actually dedicated to public use. [1937 c 72 § 78; RRS § 9663E-78. Formerly RCW 86.08.370, part.]

86.09.235 Power to construct works inside or outside of district. Flood control districts organized under the provisions of this chapter shall have authority to construct, operate and maintain any and all necessary flood control works inside and outside the boundaries of the

district. [1937 c 72 § 79; RRS § 9663E-79. Formerly RCW 86.08.370, part.]

86.09.259 Board of directors—Number—Officers. A flood control district shall be managed by a board of directors consisting of three members. The initial directors shall be appointed, and the elected directors elected, as provided in chapter 85.38 RCW. The directors shall elect a chairman from their number and shall either elect one of their number, or appoint a voter of the district, as secretary to hold office at its pleasure and who shall keep a record of its proceedings. [1985 c 396 § 58; 1967 c 154 § 7; 1937 c 72 § 87; RRS § 9663E-87. Formerly RCW 86.08.390, part.]

Severability—1985 c 396: See RCW 85.38.900.

Provisions cumulative: "The provisions of this act are cumulative with and shall not amend, repeal or supersede any other powers heretofore or hereafter granted such districts." [1967 c 154 § 5.]

86.09.265 Board of directors—Quorum—Majority vote required. A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board, there shall be a concurrence of at least a majority of the directors. [1937 c 72 § 89; RRS § 9663E-89. Formerly RCW 86.08.205, part.]

86.09.268 Board of directors—Powers and duties. The board shall have the power and it shall be its duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to employ and appoint such agents, engineers, attorneys, officers and employees as may be necessary, and prescribe their duties, to establish reasonable bylaws, rules and regulations for the government and management of affairs of the district, and generally to perform any and all acts necessary to carry out the purpose of the district organization. [1937 c 72 § 90; RRS § 9663E-90. Formerly RCW 86.08.175, part.]

86.09.271 Board of directors—Location of district office—Change of location. The office of the directors and principal place of business of the district shall be located, if possible, at some place within the district to be designated by the board. If a place convenient and suitable for conducting district business and public hearings required by this chapter cannot be found within the district, the office may be located in the county within which the major portion of district lands is situated. The office and place of business cannot thereafter be changed, except with the previous written consent of the county legislative authority of the county within which the major portion of the district is situated, and without passing a resolution to that effect at a previous regular meeting of the board, entered in the minutes thereof and without posting a notice of the change in a conspicuous public place at or near the place of business which is to be changed at least ten days prior thereto and by the previous posting of a copy of the notice for the same length of time at or near the new location of the office.

[1985 c 396 § 59; 1965 c 26 § 7; 1937 c 72 § 91; RRS § 9663E-91. Formerly RCW 86.08.200.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.274 Board of directors—Meetings—

Change of date. The directors shall hold a regular meeting at their office at least once a year, or more frequently, on the date or dates the board shall designate in their bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business: *Provided*, That the day of the regular meeting cannot be changed, except in the manner prescribed herein for changing the place of business of the district. [1985 c 396 § 60; 1937 c 72 § 92; RRS § 9663E-92. Formerly RCW 86.08.205, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.277 Board of directors—Special meetings—When notice required—Authorized business.

Special meetings of the board may be called at any time by order of a majority of the directors. Any member not joining in said order shall be given, by United States mail, at least a three days' notice of such meeting, unless the same is waived in writing, which notice shall also specify the business to be transacted and the board at such special meeting shall have no authority to transact any business other than that specified in the notice, unless the transaction of any other business is agreed to in writing by all the members of the board. [1937 c 72 § 93; RRS § 9663E-93. Formerly RCW 86.08.205, part.]

86.09.280 Board of directors—Meetings and records public—Printing of bylaws and rules.

All meetings of the directors must be public. All records of the board shall be open for the inspection of any elector of the district during business hours of the day in which any meeting of the board is held. The bylaws, rules and regulations of the board shall be printed in convenient form for distribution in the district. [1937 c 72 § 94; RRS § 9663E-94. Formerly RCW 86.08.205, part, and 86.08.210, part.]

Meetings of public officials declared public: Chapter 42.32 RCW.

86.09.283 Board of directors—Compensation and expenses of members and employees.

The board of directors shall each receive up to twenty-five dollars for attendance at official meetings of the board and for each day or major part thereof for all necessary services actually performed in connection with their duties as director. The board shall fix the compensation to be paid to the directors, secretary, and all other agents and employees of the district. A director is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the director's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. [1985 c 396 § 61; 1965 c 26 § 8; 1937 c 72 § 95; RRS § 9663E-95. Formerly RCW 86.08.175, part, and 86.08.195, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.286 Board of directors—Personal interest in contracts prohibited—Penalty—Officer may be employed.

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: *Provided*, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as foreman or as a day laborer: *Provided further*, That this section shall have no application to any person who is a state employee as defined in RCW 42.18.130. [1969 ex.s. c 234 § 35; 1937 c 72 § 96; RRS § 9663E-96. Formerly RCW 86.08.215.]

Executive conflict of interest act: Chapter 42.18 RCW.

86.09.292 Board of directors—Chairman of county commissioners may act when quorum not present.

In case any member of the district board is absent at the time of any regular monthly meeting of said board, and a quorum of said board cannot be obtained by reason of the absence of said member, it shall be the duty of the chairman of the board of county commissioners of the county in which the office of the district board is located to act in place of said absent member, and the acts of the district board at said meeting shall be valid so far as a quorum is concerned and shall have the same effect as though said absent member were present and acting thereat. [1937 c 72 § 98; RRS § 9663E-98. Formerly RCW 86.08.205, part.]

86.09.301 Board of directors—Oath.

Every district officer, upon taking office, shall take and subscribe an official oath for the faithful discharge of the duties of his office during the term of his incumbency. [1985 c 396 § 62; 1937 c 72 § 101; RRS § 9663E-101. Formerly RCW 86.08.195, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.304 Bond of officer or employee handling funds.

Every district officer or employee handling any district funds shall execute a surety bond payable to the district in the sum of double the estimated amount of funds handled monthly, conditioned that the principal will strictly account for all moneys or credit received by him for the use of the district. Each bond and the amount thereof shall be approved by the county legislative authority of the county within which the major portion of the district is situated, and thereafter filed with the secretary of the district. [1985 c 396 § 63; 1937 c 72 § 102; RRS § 9663E-102. Formerly RCW 86.08.220, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.307 Bonds—Cost charged to district. All official bonds executed by district officers under the provisions of this chapter shall be secured at the cost of the district. [1937 c 72 § 103; RRS § 9663E-103. Formerly RCW 86.08.220, part.]

86.09.310 Delivery of property to successor. Every person, upon the expiration or sooner termination of his term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his successor in office, all records, books, papers and other property under his control and belonging to such office. In case of the death of any officer, his legal representative shall turn over and deliver such records, books, papers and other property to the successor in office of such deceased person. [1937 c 72 § 104; RRS § 9663E-104.]

86.09.313 Nearest county treasurer as ex officio district treasurer. The county treasurer of any county in which lands within the flood control district are situated, whose office is nearest distant by public highway to the office of the district board and principal place of business of the district, shall be and is hereby constituted ex officio district treasurer, who shall collect all district assessments and shall keep all district funds required by law. [1937 c 72 § 105; RRS § 9663E-105. Formerly RCW 86.08.225, part.]

86.09.319 Treasurer's liability. Any county treasurer collecting or handling funds of the district shall be liable upon his official bond and to criminal prosecution for malfeasance, misfeasance or nonfeasance in office relative to any of his duties prescribed herein. [1937 c 72 § 107; RRS § 9663E-107. Formerly RCW 86.08.230.]

86.09.322 County treasurers to collect and remit assessments. It shall be the duty of the county treasurer of each county, in which lands included within the operation of the district are located, to collect and receipt for all assessments levied as herein provided, and forward monthly all sums so collected to the ex officio district treasurer who shall place the same to the credit of the proper fund of the district. [1937 c 72 § 108; RRS § 9663E-108. Formerly RCW 86.08.240.]

86.09.325 Disbursement of funds by district treasurer. The ex officio district treasurer shall pay out moneys collected or deposited with him in behalf of the district, or portions thereof, upon warrants issued by the county auditor against the proper funds of the districts, except the sums to be paid out of the bond fund for interest and principal payments on bonds. [1983 c 167 § 201; 1937 c 72 § 109; RRS § 9663E-109. Formerly RCW 86.08.250, part.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

86.09.328 Monthly report by district treasurer. The said ex officio district treasurer shall report in writing on or before the fifteenth day of each month to the district board, the amount of money held by him, the amount in

each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. [1937 c 72 § 110; RRS § 9663E-110. Formerly RCW 86.08.250, part.]

86.09.377 Voting rights. Each qualified voter of a flood control district who owns more than ten acres of land within the district shall be entitled to one additional vote for each ten acres or major fraction thereof located within the district, up to a maximum total of twenty votes for any voter, or in the case of community property, a maximum total of ten votes per member of the marital community. [1985 c 396 § 22.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.379 Elections—Informality not fatal. No informality in conducting any election authorized by this chapter shall invalidate the same, if the election shall have been otherwise fairly conducted. [1937 c 72 § 127; RRS § 9663E-127. Formerly RCW 86.08.165.]

86.09.380 Special assessments—Budgets—Alternative methods. RCW 85.38.140 through 85.38.170 constitute a mutually exclusive alternative method by which flood control districts in existence as of July 28, 1985, may measure and impose special assessments and adopt budgets. RCW 85.38.150 through 85.38.170 constitute the exclusive method by which flood control districts created after July 28, 1985, may measure and impose special assessments and adopt budgets. [1985 c 396 § 29.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.382 Assessments—Presumption that land benefited by class—Benefit ratio basis of assessment. It shall be and hereby is presumed that lands within flood control districts organized under the provisions of this chapter, shall be benefited in relation to their respective classes to be determined as herein provided, and that the relative ratios of benefits for said lands arising from their locations in said respective classes shall be the basis upon which the same shall be assessed to raise district revenues for any and all purposes now or hereafter authorized by law. [1937 c 72 § 128; RRS § 9663E-128. Formerly RCW 86.08.450, part.]

86.09.385 Assessments—Base map of lands within the district. As a basis for the levy of all assessments authorized under this chapter, the county legislative authority of the county within which the major portion of the district is situated, soon after the creation of the district, shall cause to be prepared a base map of the lands within the district and deliver the same to the secretary of the district: *Provided*, That said county legislative authority shall not be required to prepare said base map unless ample appropriation of funds for the purpose has been made. [1985 c 396 § 64; 1965 c 26 § 10; 1937 c 72 § 129; RRS § 9663E-129. Formerly RCW 86.08.420, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.388 Assessments—Appointment of appraisers—Determination of benefit ratios. Upon receipt of the base map the board of directors of the district shall appoint a board of three appraisers subject to the written approval of the county legislative authority of the county within which the major portion of the district is situated, whose duty it shall be to determine the ratio of benefits which the several tracts of land shall receive with respect to each other from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted by the directors of the district. [1985 c 396 § 65; 1965 c 26 § 11; 1937 c 72 § 130; RRS § 9663E-130. Formerly RCW 86.08.420, part, and 86.08.430, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.391 Assessments—Appraisers' board, chairman and secretary—Compensation and expenses. The board of appraisers shall elect a member as chairman and the secretary of the district or his deputy shall be ex officio secretary of the board of appraisers. The appraisers shall receive such compensation and expenses as the board of directors of the district, with the approval of the county legislative authority of the county within which the major portion of the district is situated, shall determine, and which may forthwith be paid by the issuance of district warrants. [1985 c 396 § 66; 1937 c 72 § 131; RRS § 9663E-131. Formerly RCW 86.08.420, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.394 Assessments—Classification of lands according to benefits—Factors considered. For the purpose of determining said ratios of benefits, said board of appraisers shall segregate the acreage of the respective lands within the district into such number of classes as in the sole judgment of the members of the board of appraisers shall fairly represent the manifest degrees of benefits, including benefits from better sanitation, easier accessibility, facility of drainage, promotion of land development as well as from minimization of flood damages and from actual flood protection, accruing to the several lands from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted by the directors of the district. [1937 c 72 § 132; RRS § 9663E-132. Formerly RCW 86.08.440, part.]

86.09.397 Assessments—Classification of lands by appraisers—Classes described. Said board of appraisers shall have full authority and it shall be its duty to segregate and classify the acreage of the lands and subdivisions of the same with respect to their respective relative benefits received and to be received from the organization and operation of the district and the construction and maintenance of the district works in accordance with the comprehensive plan therefor adopted

by the directors of the district. Those lands receiving the greatest benefits shall be placed in class No. 1; those lands receiving the next greatest benefits shall be placed in class No. 2, and so on down to the class of the least benefits. Those lands receiving no benefits shall be designated "nonbenefited." [1937 c 72 § 133; RRS § 9663E-133. Formerly RCW 86.08.430, part.]

86.09.400 Assessments—Percentage of benefits to lands as classed—Relative ratios. Said board of appraisers shall have full authority and it shall be its duty to determine the percentage of benefits which the acreage of the lands in each class shall have with respect to the lands in class No. 1. Those lands falling in class No. 1 shall have the ratio or percentage of one hundred and those lands in the other respective classes shall be given such percentages of the lands in class No. 1 as said board of appraisers shall determine. [1937 c 72 § 134; RRS § 9663E-134. Formerly RCW 86.08.430, part.]

86.09.403 Assessments—Surveys, investigations to determine classification and benefits. In determining the classification of said lands and their relative percentages of benefits, as herein provided, said board of appraisers shall consider the benefits of every kind accruing to said lands, as aforesaid, and shall make such investigation and surveys of the same as said board of appraisers shall deem necessary. The board of appraisers shall also examine and consider the data and records of the commission which fixed the boundaries of the district. [1937 c 72 § 135; RRS § 9663E-135. Formerly RCW 86.08.440, part.]

86.09.406 Assessments—Permanency of ratios of benefits as fixed. The ratio of percentage determined by said board of appraisers for each class of lands aforesaid shall constitute the ratio of benefits of each acre or fraction thereof in its respective class for all district assessment purposes until changed in the manner herein provided. [1937 c 72 § 136; RRS § 9663E-136. Formerly RCW 86.08.450, part.]

86.09.409 Assessments—Alternative method of determining benefit ratios. As an independent and alternative method to any other method herein authorized and subject to the prior written approval of the county legislative authority of the county within which the major portion of the district is situated, the ratio of benefits herein mentioned may be determined in their relation to the relative values of the respective benefited lands, including the improvements thereon, and the same shall be expressed on a relative percentage basis. [1985 c 396 § 67; 1937 c 72 § 137; RRS § 9663E-137. Formerly RCW 86.08.460, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.412 Assessments—Alternative method, percentage shall fix the class. In case said alternative method of determining the ratio of benefits is adopted by any such district the percentage given a tract of land

shall fix the class to which said tract belongs for assessment purposes. [1937 c 72 § 138; RRS § 9663E-138. Formerly RCW 86.08.460, part.]

86.09.415 Assessments—Determining relative values—General tax rolls. In determining the relative values of such lands, including improvements thereon, the assessed valuation of the same for general tax purposes last equalized shall be construed to be prima facie correct: *Provided*, That nothing herein contained shall be construed to prevent the fixing of values where none are shown on the general tax roll or the revision of such values on the general tax roll in any instance where in the sole judgment of the revising officers for the district the value for general tax purposes is manifestly and grossly erroneous in its relation to value of like property in the district similarly situated: *And provided further*, That in any instance where any tract of land is protected or partially protected from floods and is financially supporting the works affording such protection the revising officers for the district shall take the value of such existing flood protection into consideration and give such land equitable credit therefor. [1937 c 72 § 139; RRS § 9663E-139. Formerly RCW 86.08.460, part.]

86.09.418 Assessments—Revision of benefit classification—Appointment of reappraisers—Effect of reexamination. Upon completion of the control works of the district or of any unit thereof, the board of directors of the district may, with the written consent of the county legislative authority of the county within which the major portion of the district is situated, and upon petition signed by landowners representing twenty-five percent of the acreage of the lands in the district shall, appoint three qualified persons who shall be approved in writing by the county legislative authority, to act as a board of appraisers and who shall reconsider and revise and/or reaffirm the classification and relative percentages, or any part or parts thereof, in the same manner and with the same legal effect as that provided herein for the determination of such matters in the first instance: *Provided*, That such reexamination shall have no legal effect on any assessments regularly levied prior to the order of appraisal by the reexamining board of appraisers. [1985 c 396 § 68; 1937 c 72 § 140; RRS § 9663E-140. Formerly RCW 86.08.470, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.421 Assessments—Descriptions of lands as appraised and classified—Map and filing thereof. When said board of appraisers shall have made said determination of the ratio of benefits, as aforesaid, all the lands within the district shall be classified and properly designated and shall be described in terms of government sections, and fractions thereof in designated townships and ranges, on the base map, and the board of appraisers shall file said map with the secretary of the district: *Provided*, That platted lands may be described in terms of the recorded plat thereof. [1937 c 72 § 141; RRS § 9663E-141. Formerly RCW 86.08.470, part.]

86.09.424 Assessments—Hearing on objections to assessment ratios—Time—Place. The secretary of the district shall immediately fix a time for hearing objections to the assessment ratios determined by said board of appraisers as shown on said base map. The meeting shall be at the office of the district board and principal place of business of the district and shall be held not less than twenty-five, nor more than thirty-five, days from the date of the first publication of the notice of the hearing. [1937 c 72 § 142; RRS § 9663E-142. Formerly RCW 86.08.475, part.]

86.09.427 Assessments—Notice of hearing, publication. Notice of said hearing shall be given by the secretary of the district by causing a copy of the same to be published for three consecutive weekly issues in a newspaper of general circulation, to be selected by said secretary, published in each of the counties in which any part of the district is located. [1937 c 72 § 143; RRS § 9663E-143. Formerly RCW 86.08.475, part.]

86.09.430 Assessments—Contents of notice of hearing. Said notice of hearing on said determination of assessment ratios shall state that the base assessment map designating the classes in which the lands in the district have been placed for assessment purposes on the ratios authorized by law, has been prepared by the board of appraisers and is on file at the office of the district board and may be inspected at any time during office hours; that a hearing on said map will be held before the county legislative authority at the office of the district board on -----, the ---- day of -----, -----, at the hour of ----- o'clock (naming the time), where any person may appear and present such objections, if any, he may have to said map, and shall be signed by the secretary of the district. [1986 c 278 § 43; 1937 c 72 § 144; RRS § 9663E-144. Formerly RCW 86.08.480.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.433 Assessments—Conduct of hearing—Order. At the time set for said hearing the county legislative authority shall be present at the place designated in the notice and if it appears that due notice of the hearing has been given, shall proceed to hear such objections to the base map as shall be presented and shall hear all pertinent evidence that may be offered. The county legislative authority shall have authority to adjourn said hearings from time to time to study the record and evidence presented, to make such independent investigation as it shall deem necessary and to correct, modify or confirm the things set out on said base map or any part thereof and to determine all questions concerning the matter and shall finally make an order confirming said map with such substitutions, changes or corrections, if any, as may have been made thereon, which order shall be signed by the chairman of the county legislative authority and attached to said map. [1985 c 396 § 69; 1937 c 72 § 145; RRS § 9663E-145. Formerly RCW 86.08.485, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.439 Assessments—Conclusiveness of base assessment map. Upon the signing of said order by said county legislative authority and the attachment of the same to said base assessment map, said base assessment map and all things set out on the face thereof shall be conclusive in all things upon all parties, unless appealed from to the superior court in the manner and within the time herein provided. [1986 c 278 § 44; 1937 c 72 § 147; RRS § 9663E-147. Formerly RCW 86.08.485, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.442 Assessments—Copies of base assessment map to be filed with county assessors. When confirmed by order of said county legislative authority as aforesaid, or by order of said county legislative authority making any changes decreed by the court on appeal to the superior court, it shall be the duty of the secretary of the district to prepare a correct copy of so much of said base assessment map as includes the lands in the district situated in each county in which the lands in the district are situated, with the assessment classes and ratios properly designated thereon, and file the same with the respective county assessors of said counties for record therein. [1985 c 396 § 70; 1937 c 72 § 148; RRS § 9663E-148. Formerly RCW 86.08.500, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.445 Assessments—Levies to be made according to base assessment map. Assessments made against the respective lands in the district to carry out any of the purposes of this chapter shall be levied in accordance with their respective classifications and in proportion to their respective ratios of benefits, set out on the base assessment map. [1937 c 72 § 149; RRS § 9663E-149. Formerly RCW 86.08.500, part.]

86.09.448 Assessments—Appeal to courts. Any person, firm or corporation feeling aggrieved at any determination by said county legislative authority of the classification or relative percentage of his or its lands, aforesaid, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the land affected is situated. The matter shall be heard and tried by the court and shall be informal and summary but full opportunity to be heard and present evidence shall be given before judgment is pronounced. [1985 c 396 § 71; 1937 c 72 § 150; RRS § 9663E-150. Formerly RCW 86.08.490, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.451 Assessments—Notice of appeal. No such appeal shall be entertained by the court unless notice of the same containing a statement of the substance of the matter complained of and the manner in which the same injuriously affects the appellant's interests shall have been served personally or by registered mail, upon the county legislative authority of the county within which the major portion of the district is situated, and upon the secretary of the district, within twenty days

following the date of the determination appealed from. [1985 c 396 § 72; 1937 c 72 § 151; RRS § 9663E-151. Formerly RCW 86.08.490, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.454 Assessments—Appeal—Stay bond, when required. No bond shall be required unless a stay is desired, and an appeal shall not be a stay, unless within five days following the service of notice of appeal aforesaid, a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. [1937 c 72 § 152; RRS § 9663E-152. Formerly RCW 86.08.490, part.]

86.09.457 Assessments—Civil practice to apply—Costs, liability of district. Costs shall be paid as in civil cases brought in the superior court, and the practices in civil cases shall apply: *Provided*, That any costs awarded against said county legislative authority shall be in its official capacity only and shall be against and paid by the district. [1985 c 396 § 73; 1937 c 72 § 153; RRS § 9663E-153. Formerly RCW 86.08.495, part.]

Severability—1985 c 396: See RCW 85.38.900.

Civil practice generally: Title 4 RCW; Rules of court.

Costs, generally: Chapter 4.84 RCW.

86.09.460 Assessments—Appeal from superior to supreme court. An appeal shall lie from the judgment of the superior court as in other civil cases. [1937 c 72 § 154; RRS § 9663E-154. Formerly RCW 86.08.495, part.]

86.09.463 Assessments—County legislative authority's determination deemed prima facie correct on appeal. In all said appeals from the determination of said county legislative authority, as herein provided, said determination and all parts thereof shall be deemed to be prima facie correct. [1985 c 396 § 74; 1937 c 72 § 155; RRS § 9663E-155. Formerly RCW 86.08.490, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.466 Assessments—District budget—Approval—Basis for assessment roll. The secretary of the district on or before the first day of November in each year shall estimate the amount of money necessary to be raised for any and all district purposes during the ensuing year based upon a budget furnished him by the district board and submit the same to the county legislative authority of the county within which the major portion of the district is situated for its suggestions, approval and revision and upon the approval of the budget by said county legislative authority, either as originally submitted or as revised, the secretary shall prepare an assessment roll with appropriate headings in which must be listed all the lands in each assessment classification shown on the base assessment map. [1985 c 396 § 75; 1937 c 72 § 156; RRS § 9663E-156. Formerly RCW 86.08.510, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.469 Assessments—Assessment roll, contents—Headings. On such assessment roll in separate columns, must be specified under the appropriate headings:

(1) The reputed owner of the property assessed. If the reputed owner is not known to the secretary, the reputed owner may be stated as "unknown";

(2) The description of the land of the reputed or unknown owner sufficiently definite to identify the land. Where the land is described in the records of the county assessor's office in terms of the assessor's plat tax number, such designation shall be sufficient description of such land on the district's assessment roll. In instances where the district has adopted the alternative method of determining the ratio of benefits as herein authorized the secretary shall annually revise and specify in an appropriate column on the roll the cash value of the respective tracts of lands, including improvements thereon, described on the roll;

(3) The estimated assessable acreage of such respective lands;

(4) The designated classification and their respective ratios of benefits shown on the base assessment map in which the land is situated, with the per acre final ratio or percentage upon which every acre or fraction thereof of the respective lands are to be charged with assessments;

(5) The total amount of the assessment in dollars and cents against each tract of land. [1937 c 72 § 157; RRS § 9663E-157. Formerly RCW 86.08.520, part.]

86.09.472 Assessments—Margin for anticipated delinquencies. For the purpose of apportioning the amount of money to be raised by assessment, to the several tracts of land in accordance with their respective classifications, the secretary shall add to the amount of money to be raised fifteen percent thereof for anticipated delinquencies. [1937 c 72 § 158; RRS § 9663E-158. Formerly RCW 86.08.510, part.]

86.09.475 Assessments—How calculated. In calculating the amount of assessments to be charged against the respective tracts of land included in the annual district assessment roll, the per acre charge against the lands in class No. 1 on the base map shall be taken as one hundred percent and the per acre charge against the lands in other classes shall be reckoned on their respective final per acre percentages of the per acre assessment against the lands in said class No. 1. [1937 c 72 § 159; RRS § 9663E-159. Formerly RCW 86.08.530.]

86.09.478 Assessments—Omitted property may be back-assessed. Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for such current year and

any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency. [1937 c 72 § 160; RRS § 9663E-160. Formerly RCW 86.08.550.]

86.09.481 Assessments—Lands in more than one county. Where the district embraces lands lying in more than one county the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1937 c 72 § 161; RRS § 9663E-161. Formerly RCW 86.08.520, part.]

86.09.484 Equalization of assessments—Notice and time for meeting of board of equalization. Upon completion of the assessment roll the secretary shall deliver the same to the district board and immediately give notice thereof and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment roll must remain in the office of the secretary for the inspection of all persons interested. [1937 c 72 § 162; RRS § 9663E-162. Formerly RCW 86.08.540, part.]

86.09.487 Equalization of assessments—Meeting of directors as board, length of time—Completion of roll. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may decide the same. The secretary of the board shall be present during its session, and note all changes made at said hearing, and on or before the fifteenth day of January thereafter shall have the assessment roll completed as finally equalized by the board. [1937 c 72 § 163; RRS § 9663E-163. Formerly RCW 86.08.540, part.]

86.09.489 Levy where total assessment less than two dollars. When the assessment roll is completed as finally equalized by the board of directors and the total assessment against any tract or contiguous tracts owned by one person or corporation is less than two dollars, the county treasurer shall levy such a minimum amount of two dollars against such tract or contiguous tracts. [1965 c 26 § 13.]

86.09.490 Assessment lien—Priority. The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which the assessment becomes due and payable, but as between grantor and grantee such lien shall not attach until the fifteenth day of February of such year, which lien shall be paramount and superior to

any other lien theretofore or thereafter created, whether by mortgage or otherwise, except a lien for undelinquent flood control district assessments, diking or drainage, or diking or drainage improvement, district assessments and for unpaid and outstanding general ad valorem taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. [1937 c 72 § 164; RRS § 9663E-164. Formerly RCW 86.08.560, part.]

86.09.493 Payment of assessment—Date of delinquency—Notice to pay—Assessment book—Statements. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregations thereof to the county treasurer of each respective county in which the lands described are located, with a statement of the amounts and/or percentages of the collections on said roll which shall be apportioned to the respective district funds, and said assessments shall become due and payable at the time or times general taxes accrue payable.

One-half of all assessments on said roll shall become delinquent on the first day of June following the filing of the roll unless said one-half is paid on or before the thirty-first day of May of said year, and the remaining one-half shall become delinquent on the first day of December following, unless said one-half is paid on or before the thirtieth day of November. All delinquent assessments shall bear interest at the rate of ten percent per annum from the date of delinquency until paid.

Within twenty days after the filing of the assessment roll as aforesaid the respective county treasurers shall each publish a notice in a newspaper published in their respective counties in which any portion of the district may lie, that said assessments are due and payable at the office of the county treasurer of the county in which said land is located and will become delinquent unless paid as herein provided. Said notice shall state the dates of delinquency as fixed in this chapter and the rate of interest charged thereon and shall be published once a week for four successive weeks and shall be posted within said period of twenty days in some public place in said district in each county in which any portion of the district is situated.

Upon receiving the assessment roll, the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying, and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the county treasurer of the county in which any land in the district is located to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request, and all statements of general taxes covering any land in the district shall be accompanied by a statement showing the condition of district assessments against such lands: *Provided*, That the failure of the county treasurer to render any statement herein required of him shall not render invalid any assessments made by any district or proceedings had for the enforcement and collection of district assessments pursuant to this chapter. [1937 c 72 § 165; RRS § 9663E-165. Formerly RCW 86.08.540, part, 86.08.560, part and 86.08.570.]

86.09.496 Delinquency list—Posting and publication. On or before the thirty-first day of December of each year, the county treasurer of the county in which the land is located shall cause to be posted the delinquency list which must contain the names of persons to whom the property is assessed and a description of the property delinquent and the amount of the assessment and costs due, opposite each name and description.

He must append to and post with the delinquency list a notice that unless the assessments delinquent, together with costs and accrued interest, are paid, the real property upon which such assessments are a lien will be sold at public auction. The said notice and delinquent list shall be posted at least twenty days prior to the time of sale. Concurrent as nearly as possible with the date of the posting aforesaid, the said county treasurer shall publish the location of the place where said notice is posted and in connection therewith a notice that unless delinquent assessments together with costs and accrued interest are paid, the real property upon which such assessments are a lien will be sold at public auction. Such notice must be published once a week for three successive weeks in a newspaper of general circulation published in the county within which the land is located; but said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the date of posting and from the date of the first publication of the notice thereof, and the place must be at some point designated by the treasurer. [1937 c 72 § 166; RRS § 9663E-166. Formerly RCW 86.08.580.]

86.09.499 Sale for delinquent assessments—Postponement. The treasurer of the county in which the land is situated shall conduct the sale of all lands situated therein and must collect in addition to the assessment due as shown on the delinquent list the costs and expenses of sale and interest at the rate of ten percent per annum from the date or dates of delinquency as hereinbefore provided. On the day fixed for the sale, or some subsequent day to which he may have postponed it, and between the hours of ten o'clock a.m. and three o'clock

p.m., the county treasurer making the sale must commence the same, beginning at the head of the list, and continuing alphabetically, or in the numerical order of the parcels, lots or blocks, until completed. He may postpone the day of commencing the sale, or the sale from day to day, by giving oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day fixed. [1937 c 72 § 167; RRS § 9663E-167. Formerly RCW 86.08.590.]

86.09.502 Sale for delinquent assessments—How conducted—Certificate of sale—District as purchaser—Fee. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the county treasurer, by whom the sale is to be made, and prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including one dollar to the treasurer for duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. If the purchaser does not pay the assessment and costs before ten o'clock a.m. the following day, the property must be resold on the next sale day for the assessments and costs. In case there is no purchaser in good faith for the same on the first day that the property is offered for sale, and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the district as the purchaser, and the duplicate certificate shall be delivered to the secretary of the district, and filed by him in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the treasurer shall make an entry, "Sold to the district", and he will be credited with the amount thereof in settlement. The district, as a purchaser at said sale, shall be entitled to the same rights as a private purchaser, and may assign or transfer the certificate of sale upon the payment of the amount which would be due if redemption were being made by the owner. If no redemption is made of land for which the district holds a certificate of purchase, the district will be entitled to receive the treasurer's deed therefor in the same manner as a private person would be entitled thereto.

After receiving the amount of assessments and costs, the county treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and the year of assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the treasurer making the sale and one copy delivered to the purchaser, and the other filed in the office of the county treasurer of the county in which the land is situated: *Provided*, That upon the sale of any lot, parcel or

tract of land not larger than an acre, the fee for a duplicate certificate shall be twenty-five cents and in case of a sale to a person or a district, of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [1937 c 72 § 168; RRS § 9663E-168. Formerly RCW 86.08.600.]

86.09.505 Sale for delinquent assessments—Entries in assessment book—Book open to inspection—Lien vested in purchaser. The county treasurer, before delivering any certificate must file the same and enter in the assessment book opposite the description of the land sold, the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the description on the margin of the assessment book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use.

On filing the certificate of sale as provided in the preceding paragraph, the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money and interest at the rate of ten percent per annum, from the day of sale until redemption for the use of the purchaser. [1937 c 72 § 169; RRS § 9663E-169. Formerly RCW 86.08.610.]

86.09.508 Sale for delinquent assessments—Redemption, when and how made. A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest at any time before deed issues, by paying the amount of the purchase price and interest as in this chapter provided, and the amount of any assessments which such purchaser may have paid thereon after purchase by him and during the period of redemption in this section provided, together with like interest on such amount, and if the district is the purchaser, the redemptioner shall not be required to pay the amount of any district assessment levied subsequent to the assessment for which said land was sold, but all subsequent and unpaid assessments levied upon said land to the date of such redemption shall remain a lien and be payable and the land be subject to sale and redemption at the times applicable to such subsequent annual district assessment. Redemption must be made in legal tender, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate and pay it on demand to such person or his assignees. No redemption shall be made except to the county treasurer of the county in which the land is situated. [1937 c 72 § 170; RRS § 9663E-170. Formerly RCW 86.08.620.]

86.09.511 Sale for delinquent assessments—Entry of redemption—Deed on demand if not redeemed in two years—Fee. Upon completion of redemption, the county treasurer to whom redemption has been made shall enter the word "redeemed", the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the

certificate is made. If the property is not redeemed within two years, after the fifteenth day of January of the year in which such property was sold, the county treasurer of the county in which the land sold is situated must thereafter, upon demand of the owner of the certificate of sale, make to the purchaser, or his assignees a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar for making such deed: *Provided*, If redemption is not made of any lot, parcel or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents and when any person or district holds a duplicate certificate covering more than one tract of land, the several parcels, or tracts of lands, mentioned in the certificate may be included in one deed. [1937 c 72 § 171; RRS § 9663E-171. Formerly RCW 86.08.630.]

86.09.514 Sale for delinquent assessments—Effect and validity of deed. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

- First. The property was assessed as required by law.
- Second. The property was equalized as required by law.
- Third. That the assessments were levied in accordance with law.
- Fourth. The assessments were not paid.
- Fifth. At a proper time and place the property was sold as prescribed by law and by the proper officers.
- Sixth. The property was not redeemed.
- Seventh. The person who executed the deed was the proper officer.

Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessments by the secretary, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein, free from all incumbrances except the lien of outstanding general ad valorem taxes and of unmatured special assessments. When title to the land is in the United States or this state, such deed shall be prima facie evidence of the right of possession. [1937 c 72 § 172; RRS § 9663E-172. Formerly RCW 86.08.640, part.]

86.09.517 Sale for delinquent assessments—Mistake, misnomer does not affect sale. When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or avoidable. [1937 c 72 § 173; RRS § 9663E-173. Formerly RCW 86.08.640, part.]

86.09.520 District lands exempt from general taxes—Leasing, application of proceeds. All unsold lands owned by the district shall be exempt from general

ad valorem taxes while title to same remains in the district. The district shall not be authorized to lease any of its lands for a term longer than one year, and the proceeds for such lease shall first be applied on account of outstanding ad valorem tax liens, if any. [1937 c 72 § 174; RRS § 9663E-174. Formerly RCW 86.08.650.]

86.09.523 Liability of city, town or subdivision for benefits to roads, streets, or sewer systems. Whenever any system of improvement constructed under the provisions of this chapter results in benefit to the whole or any part of a public street or road, street or road bed or track thereof within the district, or will facilitate the construction or maintenance of any sewer system in any city or town within the district, the city, town or subdivision or any of them responsible for the maintenance of said public road, street or sewer, shall be liable for assessment for any or all district purposes. [1937 c 72 § 175; RRS § 9663E-175. Formerly RCW 86.08.660, part.]

86.09.526 Liability of public and private lands for benefits. All school, granted, and other state lands, and lands owned by the United States, when legally possible, and all county, city and other municipally owned property, not used for governmental purposes, and all privately owned lands within the corporate limits of any county, school district, city or other municipal corporation included within the operation of the district and benefited by the district improvement, shall be liable for assessment as provided herein for other property. [1937 c 72 § 176; RRS § 9663E-176. Formerly RCW 86.08.660, part.]

86.09.529 Assessment payment by city, county, subdivision—Payment by state for highway benefit. Assessments charged to any city, town, county, or subdivision thereof shall be paid from any fund of the city, town, county, or subdivision, as its governing body determines. Assessments charged on account of benefits to state highways shall be approved by the secretary of transportation and shall be paid from the state motor vehicle fund. [1984 c 7 § 379; 1937 c 72 § 177; RRS § 9663E-177. Formerly RCW 86.08.660, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

86.09.532 District funds—Created. There are hereby created for district purposes the following special funds: (1) Expense fund, (2) surplus fund, (3) suspense fund, (4) general bond fund, (5) utility bond fund, (6) contract fund. [1937 c 72 § 178; RRS § 9663E-178. Formerly RCW 86.08.670.]

86.09.535 District funds—Expense fund—Composition—Use. All assessments collected for administrative, operative and maintenance purposes, all money collected and not otherwise provided for, and any transfers authorized by law from other funds made specifically to the fund, shall be placed by the county treasurer, ex officio treasurer of the district, in the expense fund, and it shall be the duty of the district board to

make ample provision for the requirements of this fund by the levy of assessments or by the use of other revenues of the district. [1937 c 72 § 179; RRS § 9663E-179. Formerly RCW 86.08.675.]

86.09.538 District funds—Surplus fund—Composition—Use. The district shall have authority at its option of turning any district revenues not probably required during the current year to the surplus fund by adopting a resolution to that effect and filing a copy of the same with the county treasurer in charge of such fund. For this purpose unrequired moneys may be transferred from other funds, except from either of the two bond funds.

Assessments, not exceeding twenty percent of the total levy for a given year, may be levied for the purpose of supplying moneys for the surplus fund.

The surplus fund may be used for any district purpose authorized by law, by resolution of the board of directors specifying said purpose, and the duration of such use. [1937 c 72 § 180; RRS § 9663E-180. Formerly RCW 86.08.680.]

86.09.541 District funds—Suspense fund—Composition—Use. All district indebtedness, not otherwise provided for, which has not been or will not be paid on substantially a cash basis, shall be paid from the suspense fund and it shall be the duty of the district board to make ample provision for the requirements of this fund by the levy of assessments or by the use of other revenues of the district, authorized by law to be used for this purpose. [1937 c 72 § 181; RRS § 9663E-181. Formerly RCW 86.08.685.]

86.09.544 District funds—General bond fund—Composition—Use. Moneys in the general bond fund shall be used exclusively for the payment of outstanding general obligation bonds of the district with interest thereon according to their terms. It shall be the duty of the district board to make ample provision for the requirements of this fund by the levy of assessments and/or by the use of other district revenues, authorized by law to be used for this purpose. [1937 c 72 § 182; RRS § 9663E-182. Formerly RCW 86.08.695.]

86.09.547 District funds—Utility bond fund—Composition—Use. Revenues from the use, sale or lease of water and/or other service furnished by the district to the extent pledged to the payment of district utility bonds, as herein provided, shall be placed in the utility bond fund and used exclusively for the payment of such bonds with interest according to their terms. [1937 c 72 § 183; RRS § 9663E-183. Formerly RCW 86.08.700.]

86.09.550 District funds—Contract fund—Composition—Use. The proceeds from bond sales and revenues from other sources authorized by law to be used for district contract purposes shall be placed in the contract fund and shall be used for the purposes for

which the bonds were issued or for which any other contract was entered into by the district. [1937 c 72 § 184; RRS § 9663E-184. Formerly RCW 86.08.690.]

86.09.553 District funds—Custody and disbursement. All district moneys shall be paid to the county treasurer having charge of the district funds and by that officer disbursed in the manner provided by law. [1937 c 72 § 185; RRS § 9663E-185. Formerly RCW 86.08.710, part.]

86.09.556 Claims against district. Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance, the claim shall be attached to a voucher verified by the claimant or his agent and approved by the chairman of the board and countersigned by the secretary and directed to the county auditor of the county in which the office of the district treasurer is located, for the issuance of a warrant against the proper fund of the district in payment of said claim. [1937 c 72 § 186; RRS § 9663E-186. Formerly RCW 86.08.720, part.]

86.09.559 Claims against district—For administrative expenses, cost, maintenance—Payroll. Claims against the district for administrative expenses and for the costs of operation and maintenance of the system of improvement, shall be allowed by the district board and presented to the county auditor with proper vouchers attached for the issuance of warrants against the expense fund of the district. The payroll of the district shall be verified by the foreman in charge and may be presented in one claim for the individual claimants involved. The warrants for said claim shall be issued in the name of the individual claimants, but may be receipted for by said foreman. [1937 c 72 § 187; RRS § 9663E-187. Formerly RCW 86.08.720, part.]

86.09.562 District funds paid by warrant—Exception. Said county treasurer shall pay out the moneys received or deposited with him or any portion thereof upon warrants issued by the county auditor of the same county of which the district treasurer is an officer against the proper funds of the district except the sums to be paid out of the special funds for interest and principal payments on bonds or notes. [1986 c 278 § 45; 1983 c 167 § 202; 1937 c 72 § 188; RRS § 9663E-188. Formerly RCW 86.08.710, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

86.09.565 Warrants paid in order of issuance. Warrants drawn on any district fund shall be paid from any moneys in said fund in the order of their issuance. [1937 c 72 § 189; RRS § 9663E-189. Formerly RCW 86.08.710, part.]

86.09.592 Utility revenue bonds—Authorized. In any instance where the district is using, selling or leasing water for beneficial purposes or furnishing other service

under the provisions of this chapter and there is reasonable certainty of a permanent fixed income from this source, the district board, upon previous written approval of the county legislative authority of the county within which the major portion of the district is situated, shall have authority to pledge the revenues derived from a fixed proportion of the gross income thus obtained and to issue bonds of the district payable from the utility bond fund and to sell the same to raise money for district purposes. [1985 c 396 § 78; 1937 c 72 § 198; RRS § 9663E-198. Formerly RCW 86.08.790, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.595 Utility revenue bonds—Limited obligation—Payment from special fund. Bonds payable from the utility bond fund shall not be an obligation of the district and they shall state on their face that they are payable solely from a special fund derived from a certain fixed proportion (naming it) of the gross income derived by the district from the sale or lease of water or from other service, as the case may be, and such fixed proportion of such gross income shall be irrevocably devoted to the payment of such bonds with interest until the same are fully paid. [1937 c 72 § 199; RRS § 9663E-199. Formerly RCW 86.08.790, part, and 86.08.800, part.]

86.09.598 Utility revenue bonds—Form, terms, interest, etc. (1) Said utility bonds shall be numbered consecutively, shall mature in series amortized in a definite schedule during a period not to exceed twenty years from the date of their issuance, shall be in such denominations and form and shall be payable, with annual or semiannual interest at such rate or rates and at such place as the county legislative authority of the county within which the major portion of the district is situated shall provide. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1985 c 396 § 79; 1983 c 167 § 207; 1970 ex.s. c 56 § 94; 1969 ex.s. c 232 § 45; 1937 c 72 § 200; RRS § 9663E-200. Formerly RCW 86.08.800, part.]

Severability—1985 c 396: See RCW 85.38.900.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

86.09.601 Utility revenue bonds—Election to authorize. For the purpose of authorizing such utility bonds, an election shall be called, noticed, held and canvassed by the same officers, and in the same manner, as provided herein for the calling, noticing, holding and canvassing of an election to authorize general obligation bonds. [1937 c 72 § 201; RRS § 9663E-201. Formerly RCW 86.08.790, part.]

86.09.616 Utility revenue bonds and coupons—Order of payment—When funds deficient. Utility bonds and interest thereon shall be paid in the order of their respective due dates and the bonds and interest of a prior issue shall carry preference in payment over those of a subsequent issue: *Provided*, That where there is not sufficient money in the utility bond fund to pay all matured demands against the same in accordance with the preference right above mentioned, the county treasurer shall pay the interest on the bonds having the preference right of payment in their numerical order beginning with the bond having the smallest number, to the extent of the available money in the utility bond fund. [1937 c 72 § 206; RRS § 9663E-206. Formerly RCW 86.08.800, part.]

86.09.619 District directors to make provision for payment—Procedure on failure of directors. It shall be the duty of the board of directors of the district to make adequate provision for the payment of all district bonds in accordance with their terms by levy and collection of assessments or otherwise and upon its failure so to do said levy and collection of assessments shall be made as follows:

(1) If the annual assessment roll has not been delivered to the county treasurer on or before the fifteenth day of January, he shall notify the secretary by registered mail that the roll must be delivered to him forthwith.

(2) If the roll is not delivered within ten days from the date of mailing the notice, or if the roll has not been equalized and the levy made, the treasurer shall immediately notify the county commissioners of the county in which the office of the directors is situated, and such commissioners shall cause an assessment roll for the district to be prepared and shall equalize it if necessary, and make the levy in the same manner and with like effect as if it had been made and equalized by the directors, and all expenses incident thereto shall be borne by the district.

(3) In case of neglect or refusal of the secretary to perform his duties, the district treasurer shall perform them, and shall be accountable therefor, on his official bond, as in other cases. [1965 c 26 § 12; 1937 c 72 § 207; RRS § 9663E-207. Formerly RCW 86.08.820, part.]

86.09.621 Special assessment bonds. Special assessment bonds and notes shall be issued and sold in accordance with chapter 85.38 RCW. [1986 c 278 § 28.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.622 Dissolution of districts—Procedure. Flood control districts may be dissolved upon a favorable sixty percent vote of the electors voting at an election for that purpose called, noticed, conducted and canvassed in the manner provided in this chapter for special elections and no further district obligations shall thereafter be incurred: *Provided*, That the election shall not abridge or cancel any of the outstanding obligations of the district, and the county legislative authority of the county within

which the major portion of the district is situated shall each year at the time and in the manner provided in this chapter for the levy of district assessments, levy assessments against the lands in the district and the same shall be collected and enforced in the manner provided herein, until the outstanding obligations of the district are fully paid. [1985 c 396 § 83; 1937 c 72 § 208; RRS § 9663E-208. Formerly RCW 86.08.830, part.]

Severability—1985 c 396: See RCW 85.38.900.
Dissolution of districts: Chapter 53.48 RCW.

86.09.625 Dissolution of districts—When complete. When the obligations have been fully paid, all moneys in any of the funds of the district and all collections of unpaid district assessments shall be transferred to the general fund of the county within which the major portion of the district is situated as partial reimbursement for moneys expended and services rendered by the county for and in behalf of the district, and thereupon the county legislative authority of that county shall file a statement of the full payment of the district's obligations for record in the county auditor's office in each county in which any lands in the district were situated and thereafter the dissolution of the district shall be complete and its corporate existence ended. [1985 c 396 § 84; 1937 c 72 § 209; RRS § 9663E-209. Formerly RCW 86.08.830, part.]

Severability—1985 c 396: See RCW 85.38.900.
Reclamation revolving fund abolished, moneys transferred to reclamation revolving account: RCW 43.79.330 through 43.79.334.

86.09.627 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

86.09.700 Revision of district—Petition. A board may amend the district comprehensive plan of flood control, alter, reduce or enlarge the district system of improvement, within or without the district, and change the district boundaries so as to include land likely to be benefited by said amendment, alteration, reduction or enlargement by filing a petition to that effect with the county legislative authority of the county within which the major portion of the district is situated. [1985 c 396 § 85; 1965 c 26 § 14.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.703 Revision of district—Establishment of revised district—Review of benefits—Liability of original district—Segregation of funds. If funds are available the county legislative authority shall, at the expense of the county, refer the petition to the county engineer for a preliminary investigation as to the feasibility of the objects sought by the petition. If the investigation discloses that the matter petitioned for is feasible, conducive to the public welfare, consistent with a comprehensive plan of development and in the best interest of the district and will promote the purposes for which the district was organized, the county legislative authority shall so find, approve the petition, enter an order in his records declaring the establishment of the new

boundaries as petitioned for, or as modified by him, and file a certified copy of the order with each county auditor, without filing fee, and with the board.

The board shall forthwith cause a review of the classifications and ratio of benefits, in the same manner and with the same effect as for the determination of such matters in the first instance.

The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding warrants or bonds to be paid by such assessments. Until the assessments are collected and all indebtedness of the original district paid, separate funds shall be maintained for the original district and the revised district. [1985 c 396 § 86; 1965 c 26 § 15.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.710 Annexation of territory—Consolidation of special districts—Suspension of operations—Reactivation. Flood control districts may annex territory, consolidate with other special districts, and have their operations suspended and be reactivated, in accordance with chapter 85.38 RCW. [1986 c 278 § 16.]

Severability—1986 c 278: See note following RCW 36.01.010.

86.09.900 Other statutes preserved. Nothing in this chapter contained shall be construed as affecting or in any wise limiting the powers of counties, cities, towns, diking districts, drainage districts, or other municipal or public agencies in the manner authorized by law to construct and maintain dikes, levees, embankments or other structures and works, or to open, deepen, straighten and otherwise enlarge natural water courses, waterways and other channels, for the purpose of protecting such organizations from overflow. [1937 c 72 § 210; RRS § 9663E-210.]

86.09.910 Chapter supplemental to other acts. Nothing in this chapter contained shall be held or construed as in any manner abridging, enlarging or modifying any statute now or hereafter existing relating to the organization, operation and dissolution of flood control districts. This chapter is intended as an independent chapter providing for a separate and an additional authority from and to any other authority now existing for the organization, operation and dissolution of flood control districts, as provided in this chapter. [1937 c 72 § 211; RRS § 9663E-211.]

86.09.920 Chapter liberally construed. The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their objects. [1937 c 72 § 212; RRS § 9663E-212.]

86.09.930 Severability—1937 c 72. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1937 c 72 § 213; RRS § 9663E-213.]

Chapter 86.12
FLOOD CONTROL BY COUNTIES

Sections

COUNTY FLOOD CONTROL

- 86.12.010 County tax for river improvement fund—Flood control maintenance account.
- 86.12.020 Authority to make improvements—Condemnation.
- 86.12.030 Eminent domain, how exercised.
- 86.12.033 Expenses to be paid out of river improvement fund.
- 86.12.034 County entitled to abandoned channels, beds, and banks.

IMMUNITY FROM LIABILITY

- 86.12.037 Liability of county or counties to others.

COUNTY FLOOD CONTROL

86.12.010 County tax for river improvement fund—Flood control maintenance account. The county commissioners of any county may annually levy a tax, beginning with the year 1907, in such amount as, in their judgment they may deem necessary or advisable, but not to exceed twenty-five cents per thousand dollars of assessed value upon all taxable property in such county, for the purpose of creating a fund to be known as "river improvement fund." There is hereby created in each such river improvement fund an account to be known as the "flood control maintenance account." [1973 1st ex.s. c 195 § 129; 1941 c 204 § 8; 1907 c 66 § 1; Rem. Supp. 1941 § 9625. FORMER PART OF SECTION: 1907 c 66 § 4, now codified as RCW 86.12.033.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59), chapter 84.52 RCW.

86.12.020 Authority to make improvements—Condemnation. Said fund shall be expended for the purposes in this chapter provided. Any county, for the control of waters subject to flood conditions from streams, tidal or other bodies of water affecting such county, may inside or outside the boundaries of such county, construct, operate and maintain dams and impounding basins and dikes, levees, revetments, bulkheads, rip-rap or other protection; may remove bars, logs, snags and debris from and clear, deepen, widen, straighten, change, relocate or otherwise improve and maintain stream channels, main or overflow; may acquire any real or personal property or rights and interest therein for the prosecution of such works or to preserve any flood plain or regular or intermittent stream channels from any interference to the free or natural flow of flood or storm water; and may construct, operate and maintain any and all other works, structures and improvements necessary for such control; and for any such purpose may purchase, condemn or otherwise acquire land, property or rights, including beds of nonnavigable waters and state, county and school lands and property and may damage any land or other property for any such purpose, and may condemn land and other property and rights and interests therein and damage the same for any other

public use after just compensation having been first made or paid into court for the owner in the manner prescribed in this chapter. The purposes in this chapter specified are hereby declared to be county purposes. [1970 ex.s. c 30 § 10; 1941 c 204 § 9; 1935 c 162 § 1; 1919 c 109 § 1; 1907 c 66 § 2; Rem. Supp. 1941 § 9626.]

Severability—1970 ex.s. c 30: See RCW 36.89.911.

Authority and power of counties are supplemental: RCW 36.89.062.

Storm water control facilities, county powers and authority: Chapter 36.89 RCW.

86.12.030 Eminent domain, how exercised. The taking and damaging of land, property or rights therein or thereto by any county, either inside or outside of such county, for flood control purposes of the county is hereby declared to be for a public use. Such eminent domain proceedings shall be in the name of the county, shall be had in the county where the property is situated, and may unite in a single action proceedings to condemn for county use property held by separate owners, the jury to return separate verdicts for the several lots, tracts or parcels of land, or interest therein, so taken or damaged. The proceedings may conform to the provisions of *sections 921 to 926, inclusive, of Remington's Revised Statutes, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The title so acquired by the county shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. The awards in and costs of such proceedings shall be payable out of the river improvement fund. [1941 c 204 § 10; 1907 c 66 § 3; Rem. Supp. 1941 § 9627.]

***Reviser's note:** "Sections 921 to 926, inclusive, of Remington's Revised Statutes" (except for section 923) are codified as RCW 8.20.010 through 8.20.080. Section 923 was repealed by 1935 c 115 § 1 but compare the first paragraph of RCW 8.28.010 relating to the same subject matter as the repealed section.

86.12.033 Expenses to be paid out of river improvement fund. All expenses to be incurred in accomplishing the objects authorized by this act shall be paid out of said river improvement fund and which fund shall be used for no other purpose than the purposes contemplated by this chapter. [1907 c 66 § 4; RRS § 9628. Formerly RCW 86.12.010, part.]

86.12.034 County entitled to abandoned channels, beds, and banks. Whenever a county of this state, acting pursuant to RCW 86.12.010 through 86.12.033, shall make an improvement in connection with the course, channel or flow of a navigable river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Washington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed

to the county making such improvement: *Provided, however,* That any such gift, grant or conveyance shall be subject to any right, easement or interest heretofore given, granted or conveyed to any agency of the state. [1963 c 90 § 1.]

IMMUNITY FROM LIABILITY

86.12.037 Liability of county or counties to others. No action shall be brought or maintained against any county alone or when acting jointly with any other county under any law, its or their agents, officers or employees, for any noncontractual acts or omissions of such county or counties, its or their agents, officers or employees, relating to the improvement, protection, regulation and control for flood prevention and navigation purposes of any river or its tributaries and the beds, banks and waters thereof: *Provided,* That nothing contained in this section shall apply to or affect any action now pending or begun prior to the passage of this section. [1921 c 185 § 1; RRS § 9663. Formerly RCW 87.12.180.]

Chapter 86.13

FLOOD CONTROL BY COUNTIES JOINTLY

Sections

JOINT COUNTY CONTROL—1913 ACT

- 86.13.010 Boundary line rivers—Contract to control.
- 86.13.020 Expenditure of funds—Joint action generally.
- 86.13.030 Tax levy in each county—Intercounty river improvement fund.
- 86.13.040 Eminent domain—Procedure—Acquisition by purchase authorized.
- 86.13.050 Joint county meeting—Procedure.
- 86.13.060 Special commissioner—Powers and duties—Compensation.
- 86.13.070 Chapter not exclusive.
- 86.13.080 Liability as between counties.
- 86.13.090 Issuance of warrants.

JOINT COUNTY CONTROL—SUPPLEMENTAL ACTS

- 86.13.100 Lease or disposal of property—Disposition of proceeds.
- 86.13.110 State's title to abandoned channels granted to counties.

IMMUNITY FROM LIABILITY

- 86.13.120 Liability of county or counties to others.

JOINT COUNTY CONTROL—1913 ACT

86.13.010 Boundary line rivers—Contract to control. Wherever and whenever a river is or shall be the boundary line or part of the boundary line between two counties, or it, or its tributaries or outlet or part thereof, flows through parts of two counties, and the waters thereof have in the past been the cause of damage, by inundation or otherwise, to the roads, bridges or other public property situate in or to other public interests of both such counties, or the flow of such waters shall have alternated between the said counties so at one time or times such waters shall have caused damage to one county and at another time or times to the other county,

and it shall be deemed by the boards of county commissioners of both counties to be for the public interests of their respective counties that the flow of such waters be definitely confined to a particular channel, situate in whole or in part in either county, in a manner calculated to prevent such alternation or to prevent or lessen damage in the future, it shall be lawful for the two counties, and their boards of county commissioners are hereby empowered, pursuant to resolution, to enter into a contract in writing in the names of the respective counties for the purpose of settling all disputes in relation to any such situation, and providing ways and means for the control and disposition of such waters. Any such contract may provide:

(1) That it shall be operative in perpetuity, or only for a term of years or other measure of time to be specified therein.

(2) The amount of money to be expended by each county during each year of the life of said contract, or such other method of determining the amount of expenditure or dividing the financial burden as may be agreed upon.

(3) That an annual tax shall be levied, at the same time and in the same manner as other county taxes are levied, each year during the life of the contract, by the county commissioners of each county. The annual tax herein provided for need not be levied at the same rate for each county, but shall be at such rate in each county as will produce annually the amount of money for each county as is required for the fulfillment of the contract on its part: *Provided, however,* That in no event shall any such tax levy by either county exceed twenty-five cents per thousand dollars of assessed value for any one year.

(4) That the general scheme for the improvement of such river shall be as stated in such contract, but by consent of the contracting parties, pursuant to resolution of each board of county commissioners, such scheme may be modified from time to time during the life of the contract. The contract may but need not provide the details of such scheme, but must designate the general purpose to be accomplished. So far as details are not specified in the contract, same shall be for future determination by joint action of the two boards of county commissioners. Any such contract may be subsequently modified or abrogated by mutual consent evidenced by separate resolution of both boards of county commissioners. [1973 1st ex.s. c 195 § 130; 1913 c 54 § 1; RRS § 9651. Formerly RCW 86.12.040.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

86.13.020 Expenditure of funds—Joint action generally. When such a contract shall have been entered into the prosecution of the work of improvement and the expenditure of funds thereof shall be determined upon, controlled and provided for by joint action of the boards of county commissioners of the two counties. So acting jointly, they shall have power to employ subordinates, purchase material or equipment in open market or by contract, let contracts for work, or cause work to be

done by day labor, and to reject any and all bids received for work or material. All vouchers, pay rolls, reports, contracts and bonds on contracts shall be in duplicate, one copy to be filed in the office of the county auditor of each county: *Provided, however,* That the expenditure of said funds must be made in such manner so that the fund from each county is drawn on or expended alternately and such alternate expenditure shall be in proportion to the amount contributed by each county as nearly as may be practicable. [1913 c 54 § 2; RRS § 9652. Formerly RCW 86.12.050 and 86.12.060, part.]

86.13.030 Tax levy in each county—Intercounty river improvement fund. When such a contract shall have been entered into it shall be the duty of each of the boards of county commissioners to make for their respective counties, each year, a tax levy at a rate sufficient to meet the requirements of the contract to be performed by the county, or sufficient to provide such lesser amount as the boards of county commissioners shall agree upon for such year, to be evidenced by separate resolution of each board, and when such levy shall be made the same shall be extended upon the tax rolls of the county levying the same as other taxes shall be extended, and shall be collected in the same manner and shall be a lien upon the property as in the case of other taxes. The fund realized in each county by such tax levy shall go into a separate fund in the treasury of the county collecting the same, to be designated intercounty river improvement fund, and the entire fund so collected in the two counties shall be devoted to and be disbursed for the purposes specified in such contract and as in this chapter provided, and for no other purpose, but without regard to the particular county in which the work is performed, material required or expenditure made, it being the intent that the entire fund realized in the two counties shall be devoted to the one common purpose as if the two counties were one county and the two funds one fund. The fund in each county shall be disbursed by the county treasurer of such county upon warrants signed by the county auditor of that county. Such warrants shall be issued by order of the board of county commissioners of such county, or a majority thereof. Each county auditor shall, whenever requested by the county auditor of the other county, furnish the county auditor of the other county a statement of payments into and warrants drawn upon the fund of his county from time to time, and in addition thereto, each county auditor shall on the first Monday of January, April, July and October each year during the life of the contract furnish the other a complete statement thereof. Obligations incurred in the prosecution of such improvement and warrants issued shall be payable only out of said special funds, and no general obligation against or debt of either county shall be created thereby or by any contract entered into by virtue of this chapter, but it is not the intent of this chapter to deny to either county the right to have in the courts any proper proceeding to compel compliance with such contract on the part of the other county. [1913 c 54 § 3; RRS § 9653. Formerly RCW 86.12.100.]

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); chapter 84.52 RCW.

86.13.040 Eminent domain—Procedure—Acquisition by purchase authorized. When such a contract shall have been entered into the power of eminent domain is hereby vested in each of such counties, to acquire any lands necessary to straighten, widen, deepen, dike or otherwise improve any such river, its tributaries or outlet or to strengthen the banks thereof, or to acquire any land adjacent to such river, or its tributaries, or the right to cut and remove timber upon the same for the purpose of preventing or lessening the falling of timber or brush into the waters of such river or tributaries, or to acquire any rock quarry, gravel deposit or timber for material for the prosecution of such improvement, together with the necessary rights of way for the same, or to acquire any dam site or other property necessary for flood control purposes. Any such land, property or rights may be acquired by purchase instead of by condemnation proceedings. Said right of eminent domain shall extend to lands or other property owned by the state or any municipality thereof. The title to any such lands, property or rights so acquired shall vest in the county in which situate for the benefit of such enterprise and said fund, but when said contract shall have terminated by lapse of time or for any other reason, then such title shall be held by such county independent of any claims whatsoever of the other county, but any material, equipment or other chattel property on hand shall be converted into money and the money divided between the two counties in the ratio of their respective contributions to the fund. The exercise of such rights of eminent domain or purchase shall rest in the joint control of the two boards of county commissioners. Such eminent domain proceedings shall be in the name of and had in the county where the property to be acquired is situate: *Provided,* If either county shall fail or refuse to institute and prosecute any condemnation proceedings when directed so to do by any legal meeting provided for in RCW 86.13.050, such proceeding may be instituted and prosecuted by and in the name of the other county. The proceedings may conform to the provisions of *sections 921 to 926, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The awards in and costs of such proceedings shall be payable out of such funds. The purposes in this act specified are hereby declared to be county purposes of each and both of such counties. [1937 c 117 § 1; 1913 c 54 § 4; RRS § 9654. Formerly RCW 86.12.060, part, and 86.12.070.]

***Reviser's note:** "Sections 921 to 926, inclusive, of Remington & Ballinger's Annotated Codes and Statutes" (except for section 923) are codified as RCW 8.20.010 through 8.20.080. Section 923 was repealed by 1935 c 115 § 1 but compare the first paragraph of RCW 8.28.010 relating to the same subject matter as the repealed section.

86.13.050 Joint county meeting—Procedure. When such a contract shall have been entered into and occasion shall arise for the joint action of the two boards of county commissioners whether such joint action is

provided for in this chapter or otherwise desired upon any matter having relation to such contract or the prosecution of such improvement, such joint action may be secured by a notice calling a joint meeting signed by two county commissioners, designating the time and place in either county of such meeting, served by one of the two county auditors upon the remaining county commissioners at least seven days (exclusive of the date of service or mailing) prior to the time so designated. If the notice is signed by two county commissioners of the same county the place of meeting shall be at some place in the other county designated in the notice. Such service may be personal or by mail addressed to the member in care of the county auditor of his county. The six county commissioners may constitute a legal meeting without notice by being present together for that purpose. The auditor's certificate of such personal service or mailing, attached to a copy of the notice, shall be made a part of the records of the meeting and be competent proof of the fact. Except in the case hereinafter provided for, the presence of four of the county commissioners shall be necessary to constitute a legal meeting. Each meeting shall be presided over by one of those present selected by vote. The county auditor of the county wherein the meeting is held shall be secretary of the meeting, and shall make duplicate record of its proceedings, one of which, with his certificate thereon, shall be forwarded to the county auditor of the other county, and such record shall be a part of the record of the board of county commissioners of each county. A majority vote of those present at any legal meeting shall be determinative upon any question properly considered at the meeting, and shall be binding upon each county as if enacted or adopted by its own board of county commissioners separately, but no joint meeting whatsoever shall in any manner continue, extend, change, alter, modify or abrogate the contract when made or any of the terms and conditions contained therein. Each county commissioner shall be paid out of said fund in his own county all disbursements made by him for traveling and other expenses incurred in attending any joint meeting or in any way connected with the prosecution of the improvement. Any legal meeting shall have power to adjourn to another time and place. An adjourned meeting shall have all the powers of the meeting of which it is an adjournment, but shall have no power after the end of the thirtieth day following the date of the original meeting of which it is an adjournment. If the three county commissioners of either county shall fail to attend any two meetings consecutively called, the notice for the next succeeding meeting may be also served upon the special commissioner hereinafter provided for, and if he and three county commissioners attend pursuant to such notice the four shall constitute a legal meeting, but if he does not so attend and three county commissioners do attend, the same shall constitute a legal meeting: *Provided*, All notices calling a joint meeting shall specify distinctly and separately each question to be considered at said meeting; and it shall be unlawful to consider any question at such meeting or at any adjourned meeting thereof except those which have been distinctly and separately specified, except in cases

where all six county commissioners are present or five county commissioners present are unanimous on the question, and in any action which may be taken on any question other than those specified in the notice shall be void and shall not be binding on either county, except in cases where all six county commissioners are present or the action was by unanimous vote of five county commissioners present at such meeting. [1913 c 54 § 5; RRS § 9655. Formerly RCW 86.12.060, part, and 86.12.120 through 86.12.140.]

86.13.060 Special commissioner—Powers and duties—Compensation. When such a contract shall have been entered into there shall be designated at the first legal joint meeting, or adjournment thereof, held in each calendar year a special commissioner to serve as such until the first joint meeting held in the ensuing year. If such designation shall not be made at any such first annual meeting, the United States engineer in charge of the district in which such improvement is located shall be such special commissioner until the next succeeding first annual meeting. If a special commissioner shall for any reason fail to serve as such officer, or be removed by unanimous vote of any legal meeting, a successor to him may be chosen at any subsequent legal joint meeting during his term. Such special commissioner shall have power to attend and vote at any joint meeting in the following cases and none other, to wit: (1) In cases specially so provided in RCW 86.13.050 hereof; (2) In any case where the vote of any such joint meeting shall stand equally divided upon any question arising under this chapter or such contract or in the prosecution of the work of improvement. The special commissioner shall have no voice or vote except upon questions on which the vote of the county commissioners is equally divided. The procedure in cases covered by the foregoing subdivision (2) of this section shall be substantially as follows: It shall be the duty of the secretary of the meeting at which the division shall occur, if the attendance of the special commissioner at that meeting is not secured, to forthwith transmit to the special commissioner written notice of the fact of disagreement and the question involved, and of the time and place to which the meeting shall have been adjourned or at which the question will recur. If there shall be no such adjournment of the meeting, or if the secretary shall not give such notice, any two commissioners may in the manner provided in RCW 86.13.050 call a joint meeting for the consideration of the question in dispute, and in such event either county auditor may give such notice to the special commissioner. No informality in the mode of securing the attendance of the special commissioner shall invalidate the proceedings of or any vote taken at any meeting which he shall attend and which he is empowered to attend by the provisions of this chapter. The special commissioner shall receive, to be paid equally out of the two funds, his traveling and other expenses incurred in attending meetings or otherwise in connection with the work of improvement, and such compensation for his services as shall be fixed by the joint meeting which shall have selected him, or failing to be so fixed, his

compensation shall be ten dollars per day of actual service. [1913 c 54 § 6; RRS § 9656. Formerly RCW 86.12.150 and 86.12.160.]

86.13.070 Chapter not exclusive. Nothing in this chapter contained shall be construed to prevent any county which may be a party to such contract from further caring for any such river or the banks thereof, as authorized so to do by existing laws or by such laws as may be hereafter enacted, provided the rights of neither county, as fixed by contract, shall be impaired thereby. [1913 c 54 § 7; RRS § 9657. Formerly RCW 86.12.190.]

86.13.080 Liability as between counties. No legal claim of any kind or character whatsoever in favor of one county and against the other shall be based upon or created by the enactment hereof, except such as may arise when the contract herein provided for shall have been entered into. After such contract shall have been entered into, should any loss or damage be sustained by either county occasioned by the overflow of any such river, if caused by any act or omission to act of the other county, its officers or agents, or any other cause whatsoever, then such county so suffering or sustaining said loss shall not be entitled to recover therefor from the other county, nor shall any cause of action, legal or equitable be based thereon: *Provided, however,* That if either county shall suffer loss or damage because of the failure or refusal of the other county to perform any such contract on its part to be performed, the injured county shall have a cause of action against the defaulting county to recover the same, but the limit of recovery for any loss or damage suffered in any one year shall not exceed the sum of ten thousand dollars, and any such recovery shall be limited to such special fund, and in no event be recoverable out of the general fund of such defaulting county. If any such loss or damage shall be liquidated in an amount by agreement or by judgment, the defaulting county shall increase its tax levy for said special fund for the ensuing year sufficiently to provide for such liquidated amount: *And provided further,* That either county may have any proper action in the courts to compel the performance of the contract or any duty imposed thereby or by this chapter. [1913 c 54 § 8; RRS § 9658. Formerly RCW 86.12.170.]

86.13.090 Issuance of warrants. When such a contract shall have been entered into, it shall be lawful to issue warrants upon said fund though there be at the time of such issuance no money in the fund, but in such cases the aggregate of such warrants so issued in any year shall not exceed one-half the amount of the next annual tax levy required by such contract. Such warrants shall be stamped by the county treasurer when presented to him for payment, to bear interest at a certain rate thereafter until paid, such rate to be the then current rate as determined by the county auditor. [1913 c 54 § 9; RRS § 9659. Formerly RCW 86.12.110.]

JOINT COUNTY CONTROL— SUPPLEMENTAL ACTS

86.13.100 Lease or disposal of property—Disposition of proceeds. Whenever two counties of this state, acting under a contract made pursuant to RCW 86.13.010 through 86.13.090, shall make an improvement in connection with the course, channel or flow of a river, shall acquire property by statute, purchase, gift or otherwise, said counties, acting through their boards of county commissioners jointly shall have the power, and are hereby authorized to sell, transfer, trade, lease, or otherwise dispose of said property by public or private, negotiation or sale. The deeds to the property so granted, transferred, leased or sold shall be executed by the chairman of the meeting of the joint boards of county commissioners, and attested by the secretary of said joint meeting where the sale is authorized. The proceeds of the sale of said property shall be used by said counties for the carrying on, completion or maintenance of said improvement, as directed by the boards of county commissioners of said counties acting jointly. [1915 c 103 § 1; RRS § 9660. Formerly RCW 86.12.080.]

Construction—1915 c 103: "This act is not intended to modify, change, alter or amend chapter 54 of the Session Laws of 1913 [RCW 86.13.010 through 86.13.090]." [1915 c 103 § 2.]

86.13.110 State's title to abandoned channels granted to counties. Whenever two counties of this state, acting under a contract made pursuant to RCW 86.13.010 through 86.13.090, shall make an improvement in connection with the course, channel or flow of a river, thereby causing it to abandon its existing channel, bed, bank or banks for the entire distance covered by said improvement, or for any part or portion thereof, or by said improvement shall prevent a river from resuming at a future time an ancient or abandoned channel or bed, or shall construct improvements intended so to do, all the right, title and interest of the state of Washington in and to said abandoned channel or channels, bed or beds, bank or banks, up to and including the line of ordinary high water, shall be and the same is hereby given, granted and conveyed jointly to the counties making such improvement. [1915 c 140 § 1; RRS § 9662. Formerly RCW 86.12.090.]

IMMUNITY FROM LIABILITY

86.13.120 Liability of county or counties to others. See RCW 86.12.037.

Chapter 86.15

FLOOD CONTROL ZONE DISTRICTS

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86.15.010 Definitions. The definitions set forth in this section apply through this chapter.

- (1) "Board" means the county legislative authority.
- (2) "Flood control improvement" means any works, projects, or other facilities necessary for the control of flood waters within the county or any zone or zones.
- (3) "Flood waters" and "storm waters" means any storm waste or surplus waters, including surface water, wherever located within the county or a zone or zones where such waters endanger public highways, streams and water courses, harbors, life, or property.
- (4) "Participating zones" means two or more zones found to benefit from a single flood control improvement or storm water control improvement.
- (5) "Storm water control improvement" means any works, projects, or other facilities necessary to control and treat storm water within the county or any zone or zones.
- (6) "Supervisors" means the board of supervisors, or governing body, of a zone.
- (7) "Zones" means flood control zone districts which are quasi municipal corporations of the state of Washington created by this chapter. [1983 c 315 § 11; 1961 c 153 § 1.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.020 Zones—Creation. The board may initiate, by affirmative vote of a majority of the board, the creation of a zone or additional zones within the county, and without reference to an existing zone or zones, for the purpose of undertaking, operating, or maintaining flood control projects or storm water control projects or groups of projects that are of special benefit to specified areas of the county. Formation of a zone may also be initiated by a petition signed by twenty-five percent of the electors within a proposed zone based on the vote cast in the last county general election. If the formation of the zone is initiated by petition, the board shall incorporate the terms of the petition in a resolution within forty days after receiving the petition from the county auditor. Thereafter, the procedures for establishing a zone shall be the same whether initiated by motion of the board or by a petition of electors.

Petitions shall be in a form prescribed and approved by the county auditor and shall include the necessary legal descriptions and other information necessary for establishment of a zone by resolution. When the sponsors of a petition have acquired the necessary signatures, they shall present the petition to the county auditor who shall thereafter certify the sufficiency of the petition within forty-five days. If the petition is found to meet the requirements specified in this chapter, the auditor shall transmit the petition to the board for their action; if the petition fails to meet the requirements of this chapter, it shall be returned to the sponsors. [1983 c 315 § 12; 1961 c 153 § 2.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.025 Districts incorporating watersheds authorized—Subzones authorized—Creation, procedure—Administration—Powers. (1) The board is authorized to establish a countywide flood control zone district incorporating the boundaries of any and all watersheds located within the county which are not specifically organized into flood control zone districts established pursuant to chapter 86.15 RCW. Upon establishment of a countywide flood control zone district as authorized by this section, the board is authorized and may divide any or all of the zone so created into separately designated subzones and such subzones shall then be operated and be legally established in the same manner as any flood control zone district established pursuant to chapter 86.15 RCW.

(2) Countywide flood control zone districts shall be established pursuant to the requirements of RCW 86.15.020, 86.15.030 and 86.15.040 as now law of hereafter amended. Subzones established from countywide flood control zone districts shall be established by resolution of the board and the provisions of RCW 86.15.020, 86.15.030 and shall not apply to the establishment of such subzone as authorized by this section.

(3) Such subzones shall be operated and administered in the same manner as any other flood control zone district in accordance with the provisions of chapter 86.15 RCW.

(4) Such subzones shall have authority to exercise any and all powers conferred by the provisions of RCW 86.15.080 as now law or hereafter amended.

(5) The board shall exercise the same power, authority, and responsibility over such subzones as it exercises over flood control zone districts in accordance with the provisions of chapter 86.15 RCW as now law or hereafter amended, and without limiting the generality of this subsection, the board may exercise over such subzones, the powers granted to it by RCW 86.15.160, 86.15.170, 86.15.176 and 86.15.178 as now law or hereafter amended. [1969 ex.s. c 195 § 1.]

86.15.030 Districts incorporating watersheds authorized—Formation, hearing and notice. Upon receipt of a petition asking that a zone be created, or upon motion of the board, the board shall adopt a resolution which shall describe the boundaries of such proposed zone; describe in general terms the flood control needs or requirements within the zone; set a date for public hearing upon the creation of such zone, which shall be not more than thirty days after the adoption of such resolution. Notice of such hearing and publication shall be had in the manner provided in RCW 36.32.120(7).

At the hearing scheduled upon the resolution, the board shall permit all interested parties to be heard. Thereafter, the board may reject the resolution or it may modify the boundaries of such zone and make such other corrections or additions to the resolutions as they deem necessary to the accomplishment of the purpose of this chapter: *Provided*, That if the boundaries of such zone are enlarged, the board shall hold an additional hearing following publication and notice of such new boundaries: *Provided further*, That the boundaries of any zone shall generally follow the boundaries of the watershed area affected: *Provided further*, That the immediately preceding proviso shall in no way limit or be construed to prohibit the formation of a countywide flood control zone district authorized to be created by RCW 86.15.025.

Within ten days after final hearing on a resolution, the board shall issue its order. [1969 ex.s. c 195 § 2; 1961 c 153 § 3.]

86.15.040 Limitation on the formation of zones. Any zone to be created pursuant to this chapter which includes lands located within the limits of any city or town or flood control district shall, prior to its creation, be approved by the legislative body of such city, town or district: *Provided*, That unless such city or town or district legislative body approves or disapproves the creation of such zone within one hundred and twenty days after receiving a request for approval from the board, it shall be conclusively presumed that such legislative body approves the creation of such zone: *Provided further*, That if within ninety days following legislative approval or disapproval ten percent of the electors of such city, town or district, file with the county auditor a petition requesting an election, such city, town or district shall conduct an election within its limits to determine if the

residents of such city, town or district wish to be included within or excluded from such zone. The results of such election shall be binding, and the cost of such election shall be borne by the city, town or district. [1961 c 153 § 4.]

86.15.050 Zones—Governing body. The board of county commissioners of each county shall be ex officio, by virtue of their office, supervisors of the zones created in each county. [1961 c 153 § 5.]

86.15.060 Administration. Administration of the affairs of zones shall be in the county engineer. The engineer may appoint such deputies and engage such employees, specialists and technicians as may be required by the zone and as are authorized by the zone's budget. Subject to the approval of the board, the engineer may organize, or reorganize as required, the zone into such departments, divisions or other administrative relationships as he deems necessary to its efficient operation. [1961 c 153 § 6.]

86.15.070 Advisory committees. The board may appoint a county-wide advisory committee, which shall consist of not more than fifteen members. The board also may appoint an advisory committee for any zone or combination of two or more zones which committees shall consist of not more than five members. Members of an advisory committee shall serve without pay and shall serve at the pleasure of the board. [1967 ex.s. c 136 § 6; 1961 c 153 § 7.]

86.15.080 General powers. A zone or participating zone may:

(1) Exercise all the powers vested in a county for flood water or storm water control purposes under the provisions of chapters 86.12, 86.13, 36.89, and 36.94 RCW: *Provided*, That in exercising such powers, all actions shall be taken in the name of the zone and title to all property or property rights shall vest in the zone;

(2) Plan, construct, acquire, repair, maintain, and operate all necessary equipment, facilities, improvements, and works to control, conserve, and remove flood waters and storm waters and to otherwise carry out the purposes of this chapter including, but not limited to, protection of the quality of water sources;

(3) Take action necessary to protect life and property within the district from flood water damage;

(4) Control, conserve, retain, reclaim, and remove flood waters and storm waters, including waters of lakes and ponds within the district, and dispose of the same for beneficial or useful purposes under such terms and conditions as the board may deem appropriate, subject to the acquisition by the board of appropriate water rights in accordance with the statutes;

(5) Acquire necessary property, property rights, facilities, and equipment necessary to the purposes of the zone by purchase, gift, or condemnation: *Provided*, That property of municipal corporations may not be acquired without the consent of such municipal corporation;

(6) Sue and be sued in the name of the zone;

(7) Acquire or reclaim lands when incidental to the purposes of the zone and dispose of such lands as are surplus to the needs of the zone in the manner provided for the disposal of county property in chapter 36.34 RCW;

(8) Cooperate with or join with the state of Washington, United States, another state, any agency, corporation or political subdivision of the United States or any state, Canada, or any private corporation or individual for the purposes of this chapter;

(9) Accept funds or property by loan, grant, gift or otherwise from the United States, the state of Washington, or any other public or private source;

(10) Remove debris, logs, or other material which may impede the orderly flow of waters in streams or water courses: *Provided*, That such material shall become property of the zone and may be sold for the purpose of recovering the cost of removal: *Provided further*, That valuable material or minerals removed from public lands shall remain the property of the state. [1983 c 315 § 13; 1961 c 153 § 8.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.090 Extraterritorial powers. A zone may, when necessary to protect life and property within its limits from flood water, exercise any of its powers specified in RCW 86.15.080 outside its territorial limits. [1961 c 153 § 9.]

86.15.095 Zones constitute quasi municipal corporation—Constitutional and statutory powers. A flood control zone district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A flood control zone district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued. [1983 c 315 § 6.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.100 Flood control or storm water control improvements—Authorization. The supervisors may authorize the construction, extension, enlargement, or acquisition of necessary flood control or storm water control improvements within the zone or any participating zones. The improvements may include, but shall not be limited to the extension, enlargement, construction, or acquisition of dikes and levees, drain and drainage systems, dams and reservoirs, or other flood control or storm water control improvements; widening, straightening, or relocating of stream or water courses; and the acquisition, extension, enlargement, or construction of any works necessary for the protection of stream and water courses, channels, harbors, life, and property. [1983 c 315 § 14; 1961 c 153 § 10.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.110 Flood control or storm water control improvements—Initiation—Comprehensive plan. Flood control or storm water control improvements may be extended, enlarged, acquired, or constructed by a zone pursuant to a resolution adopted by the supervisors. The resolution shall specify:

(1) Whether the improvement is to be extended, enlarged, acquired, or constructed;

(2) That either:

(a) A comprehensive plan of development for flood control has been prepared for the stream or water course upon which the improvement will be enlarged, extended, acquired, or constructed, and that the improvement generally contributes to the objectives of the comprehensive plan of development: *Provided*, That the plan shall be first submitted to the state department of ecology at least ninety days in advance of the beginning of any flood control project or improvement; and shall be subject to all the regulatory control provisions by the department of ecology as provided in chapter 86.16 RCW; or

(b) A comprehensive plan of development for storm water control has been prepared for the area that will be served by the proposed storm water control facilities;

(3) If the improvement is to be constructed, that preliminary engineering studies and plans have been made, and that the plans and studies are on file with the county engineer;

(4) The estimated cost of the acquisition or construction of the improvement, together with such supporting data as will reasonably show how the estimates were arrived at; and

(5) That the improvement will benefit:

(a) Two or more zones, hereinafter referred to as participating zones; or

(b) A single zone; or

(c) The county as a whole, as well as a zone or participating zones. [1983 c 315 § 15; 1961 c 153 § 11.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.120 Flood control or storm water control improvements—Hearing, notice. Before finally adopting a resolution to undertake any flood control improvement or storm water control improvement, the supervisors shall hold a hearing thereon. Notice and publication of the hearing shall be given under RCW 36.32.120(7). The supervisors may conduct any such hearing concurrently with a hearing on the establishment of a flood control zone, and may in such case designate the proposed zone a beneficiary of any improvement. [1983 c 315 § 16; 1961 c 153 § 12.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.130 Zone treasurer—Funds. The treasurer of each zone shall be the county treasurer. He shall establish within his office a zone flood control fund for each zone into which shall be deposited the proceeds of all tax levies, assessments, gifts, grants, loans, or other revenues which may become available to a zone.

The treasurer shall also establish the following accounts within the zone fund:

(1) For each flood control improvement financed by a bond issue, an account to which shall be deposited the proceeds of any such bond issue; and

(2) An account for each outstanding bond issue to which will be deposited any revenues collected for the retirement of such outstanding bonds or for the payment of interest or charges thereon; and

(3) A general account to which all other receipts of the zone shall be deposited. [1961 c 153 § 13.]

86.15.140 Budget. The supervisors shall annually at the same time county budgets are prepared adopt a budget for the zone, which budget shall be divided into the following appropriation items: (1) Overhead and administration; (2) maintenance and operation; (3) construction and improvements; and (4) bond retirement and interest. In preparing the budget, the supervisors shall show the total amount to be expended in each appropriation item and the proportionate share of each appropriation item to be paid from each account of the zone.

In preparing the annual budget, the supervisors shall under the appropriation item of construction and improvement list each flood control improvement or storm water control improvement and the estimated expenditure to be made for each during the ensuing year. The supervisors may at any time during the year, if additional funds become available to the zone, adopt a supplemental budget covering additional authorized improvements.

The zone budget or any supplemental budget shall be approved only after a public hearing, notice of which shall be given as provided by RCW 36.32.120(7). [1983 c 315 § 17; 1961 c 153 § 14.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.150 County aid. Whenever the supervisors have found under the provisions of RCW 86.15.110 that a flood control improvement or storm water control improvement initiated by any zone will be of benefit to the county as a whole, as well as to the zone or participating zones; or whenever the supervisors have found that the maintenance and operation of any flood control improvement or storm water control improvement within any zone will be of benefit to the overall flood control program or storm water control program of the county, the board may authorize the transfer of any funds available to the county for flood control or storm water control purposes to any zone or participating zones for flood control or storm water control purposes. [1983 c 315 § 18; 1961 c 153 § 15.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.160 Excess levies, assessments, and charges—Local improvement districts. For the purposes of this chapter the supervisors may authorize:

(1) An annual excess ad valorem tax levy within any zone or participating zones when authorized by the voters of the zone or participating zones under RCW 84.52.052 and 84.52.054;

(2) An assessment upon property, including state property, specially benefited by flood control improvements or storm water control improvements imposed under chapter 86.09 RCW;

(3) Within any zone or participating zones an annual ad valorem property tax levy of not to exceed fifty cents per thousand dollars of assessed value when the levy will not take dollar rates that other taxing districts may lawfully claim and that will not cause the combined levies to exceed the constitutional and/or statutory limitations, and the additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their authorized levies;

(4) A charge, under RCW 36.89.080, for the furnishing of service to those who are receiving or will receive benefits from storm water control facilities and who are contributing to an increase in surface water runoff. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state and state property, shall be liable for the charges to the same extent a private person and privately owned property is liable for the charges, and in setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(5) The creation of local improvement districts and utility local improvement districts, the issuance of improvement district bonds and warrants, and the imposition, collection, and enforcement of special assessments on all property, including any state-owned or other publicly-owned property, specially benefited from improvements in the same manner as provided for counties by chapter 36.94 RCW. [1986 c 278 § 60; 1983 c 315 § 19; 1973 1st ex.s. c 195 § 131; 1961 c 153 § 16.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, 36.94.145, and 56.08.012.

86.15.162 Delinquent assessment—Sale of parcel—Accrual of interest. If the delinquent assessment remains unpaid on the date fixed for the sale under RCW 86.09.496 and 86.09.499, the parcel shall be sold in the same manner as provided under RCW 87.03.310 through 87.03.330. If the district reconveys the land under RCW 87.03.325 due to accident, inadvertence, or misfortune, however, interest shall accrue not at the rate provided in RCW 87.03.270, but at the rate provided in RCW 86.09.505. [1983 c 315 § 7.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.165 Voluntary assessments for flood control or storm water control improvements—Procedure—Disposition of proceeds—Use. The supervisors may

provide by resolution for levying voluntary assessments, under a mode of annual installments extending over a period not exceeding fifteen years, on property benefited from a flood control improvement or storm water control improvement. The voluntary assessment shall be imposed only after each owner of property benefited by the flood control improvement has agreed to the assessment by written agreement with the supervisors. The agreement shall be recorded with the county auditor and the obligations under the agreement shall be binding upon all heirs and all successors in interest of the property.

The voluntary assessments need not be uniform or directly related to benefits to the property from the flood control improvement or storm water control improvement.

The levying, collection, and enforcement authorized in this section shall be in the manner now and hereafter provided by law for the levying, collection, and enforcement of local improvement assessments by cities and towns, insofar as those provisions are not inconsistent with the provisions of this chapter.

The disposition of all proceeds from voluntary assessments shall be in accordance with RCW 86.15.130.

The proceeds from voluntary assessments may be used for any flood control improvement or storm water control improvement not inconsistent with the provisions of this chapter, and in addition the proceeds may be used for operation and maintenance of flood control improvements or storm water control improvements constructed under the authority of this chapter. [1983 c 315 § 20; 1969 ex.s. c 195 § 3.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.170 General obligation bonds. The supervisors may authorize the issuance of general obligation bonds to finance any flood control improvement or storm water control improvement and provide for the retirement of the bonds with ad valorem property tax levies. The general obligation bonds may be issued and the bond retirement levies imposed only when the voters of the flood control zone district approve a ballot proposition authorizing both the bond issuance and imposition of the excess bond retirement levies pursuant to Article VIII, section 6 and Article VII, section 2(b) of the state Constitution and RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. The bonds shall be issued on behalf of the zone or participating zones and be approved by the voters of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. The bonds may not exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of taxable property within the zone or participating zones, as the term "value of the taxable property" is defined in RCW 39.36.015. The bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 62. Prior: 1983 c 315 § 21; 1983 c 167 § 211; 1961 c 153 § 17.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—1983 c 315: See note following RCW 90.03.500.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

86.15.176 Service charges authorized—Disposition of revenue. The supervisors may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits from a flood control improvement including public entities, except as otherwise provided in RCW 90.03.525. The service charge shall be uniform for the same class of benefits or service. In classifying services furnished or benefits received the board may in its discretion consider the character and use of land and its water runoff characteristics and any other matters that present a reasonable difference as a ground for distinction. Service charges shall be applicable to a zone or participating zones. The disposition of all revenue from service charges shall be in accordance with RCW 86.15.130. [1986 c 278 § 61; 1983 c 315 § 22; 1967 ex.s. c 136 § 7.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.178 Revenue bonds—Lien for delinquent service charges (as amended by 1983 c 167). (1) The county legislative authority may authorize the issuance of revenue bonds to finance any flood control improvement. Such bonds may be issued and sold by the county legislative authority in the same manner as prescribed in RCW 36.67.510 through 36.67.570 pertaining to counties. Such bonds shall be issued on behalf of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Each revenue bond shall state on its face that it is payable from a special fund, naming such fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund.

A zone or participating zones shall have a lien for delinquent service charges, including interest thereon, against the premises benefited by a flood control improvement, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 212; 1967 ex.s. c 136 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

86.15.178 Revenue bonds—Lien for delinquent service charges (as amended by 1983 c 315). The supervisors may authorize the issuance of revenue bonds to finance any flood control improvement or storm water control improvement. The bonds may be issued by the supervisors in the same manner as prescribed in RCW 36.67.510 through 36.67.570 pertaining to counties. The bonds shall be issued on behalf of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. The bonds may be in any form, including bearer bonds or registered bonds.

Each revenue bond shall state on its face that it is payable from a special fund, naming the fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund.

A zone or participating zones shall have a lien for delinquent service charges, including interest thereon, against the premises benefited by a flood control improvement or storm water control improvement, which

lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290. [1983 c 315 § 23; 1967 ex.s. c 136 § 8.]

Reviser's note: RCW 86.15.178 was amended twice during the 1983 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at any session of the same legislature, see RCW 1.12.025.

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.180 Protection of public property. Any agency or department of the state of Washington, or any political subdivision or municipal corporation of the state may contribute funds to the county or any zone or zones to assist the county, zone or zones in carrying out the purposes of this chapter when such agency, department, subdivision or municipal corporation finds such action will materially contribute to the protection of publicly owned property under its jurisdiction. [1961 c 153 § 18.]

86.15.190 Abatement of nuisances. The supervisors may order, on behalf of the zone or participating zones, that an action be brought in the superior court of the county to require the removal of publicly or privately owned structures, improvements, facilities, or accumulations of debris or materials that materially contribute to the dangers of loss of life or property from flood waters. Where the structures, improvements, facilities, or accumulations of debris or materials are found to endanger the public health or safety the court shall declare them a public nuisance, and forthwith order their abatement. If the abatement is not completed within the time ordered by the court, the county may abate the nuisance and charge the cost of the action against the land upon which the nuisance is located, and the payment of the charge may be enforced and collected in the same manner at the same time as county property taxes. [1983 c 315 § 24; 1961 c 153 § 19.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.200 Flood control zones—Consolidation, abolishment. The board may consolidate any two or more zones or abolish any zone pursuant to a resolution adopted by the board providing for such action. Before adopting such a resolution, the board shall conduct a public hearing notice of which shall be given as provided by RCW 36.32.120(7). Any indebtedness of any zone or zones which are abolished or consolidated shall not be impaired by their abolishment or consolidation, and the board shall continue to levy and collect all necessary taxes and assessments until such debts are retired. Whenever twenty-five percent of the electors of any zone file a petition, meeting the requirements of sufficiency set forth in RCW 86.15.020, asking that a zone be abolished, the board shall: (1) adopt a resolution abolishing the zone or (2) at the next general election place a proposition on the ballot calling for a yes or no vote on the abolition of the zone. [1961 c 153 § 20.]

86.15.210 Transfer of property. A diking, drainage, or sewerage improvement district, flood control district,

diking district, drainage district, intercounty diking and drainage district, or zone may convey title to any property improvements or assets of the districts or zone to the county or a zone for flood control purposes. If the property improvements or assets are surplus to the needs of the district or zone the transfer may be made by private negotiations, but in all other cases the transfers are subject to the approval of a majority of the registered voters within the district or zone. Nothing in this section permits any district or zone to impair the obligations of any debt or contract of the district or zone. [1983 c 315 § 25; 1961 c 153 § 21.]

Severability—1983 c 315: See note following RCW 90.03.500.

86.15.220 Planning of improvements. Nothing in this chapter shall be construed as limiting the right of counties under the provisions of chapters 86.12 and 86.13 RCW to undertake the planning or engineering studies necessary for flood control improvements or financing the same from any funds available for such purposes. [1961 c 153 § 22.]

86.15.230 Public necessity of chapter. This chapter is hereby declared to be necessary for the public health, safety, and welfare and that the taxes and special assessments authorized hereby are found to be for a public purpose. [1961 c 153 § 23.]

86.15.900 Severability—Construction—1961 c 153. If any provision of this chapter, as now or hereafter amended, or its application to any person or circumstance is held invalid, the remainder of the chapter, and its application to other persons or circumstances shall not be affected. [1961 c 153 § 24.]

86.15.910 Construction of chapter. This chapter shall be complete authority for the accomplishment of purposes hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations contained shall not apply to this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1961 c 153 § 25.]

86.15.920 Titles not part of the chapter. The section titles shall not be considered a part of this chapter. [1961 c 153 § 26.]

Chapter 86.16

FLOOD PLAIN MANAGEMENT (Formerly: Flood control zones by state)

Sections

86.16.010	Statement of policy—State control assumed.
86.16.020	Flood plain management regulation.
86.16.025	Authority of department.
86.16.027	Authority of supervisor—Rules.
86.16.030	Authority of supervisor—Employment and purchasing.
86.16.031	Duties of the department of ecology.
86.16.035	Department of ecology—Control of dams and obstructions.

86.16.040	Authority of supervisor—Survey of flood control needs.
86.16.041	Flood plain management ordinances and amendments—Filing with the department of ecology—Disapproval by the department.
86.16.051	Basis for state and local flood plain management.
86.16.060	Flood control zones—Establishment by supervisor.
86.16.061	Adoption of rules.
86.16.065	Flood control zones—Alteration and revision.
86.16.067	Flood control zones—Notice—Publication—Contents—Objections.
86.16.070	Flood control zones—Presumption as to notice—Order establishing or changing zone.
86.16.071	Chapter not to create liability for damages against the state.
86.16.080	Permit for improvement—How obtained—Emergencies.
86.16.081	Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority.
86.16.090	Improvements without permit as nuisance—Abatement.
86.16.110	Appeals.
86.16.120	Flood damages defined.
86.16.130	Supervisor's other powers and duties unaffected by chapter.
86.16.150	Severability—1935 c 159.
86.16.160	Local programs not prevented.
86.16.170	"Supervisor of flood control" defined.
86.16.180	Processing of permits and authorizations for emergency water withdrawal and facilities to be expedited.
86.16.900	Chapter liberally construed.

86.16.010 Statement of policy—State control assumed. The legislature finds that the alleviation of recurring flood damages to public and private property and to the public health and safety is a matter of public concern. As an aid in effecting such alleviation the state of Washington, in the exercise of its sovereign and police powers, hereby assumes full regulatory control over the navigable and nonnavigable waters flowing or lying within the borders of the state subject always to the federal control of navigation, to the extent necessary to accomplish the objects of this chapter. In addition, in an effort to alleviate flood damage and expenditures of government funds, the federal government adopted the national flood insurance act of 1968 and subsequently the flood disaster protection act of 1973. The department of ecology is the state agency in Washington responsible for coordinating the flood plain management regulation elements aspects of the national flood insurance program. [1987 c 523 § 1; 1935 c 159 § 1; RRS § 9663A-1.]

86.16.020 Flood plain management regulation. State-wide flood plain management regulation shall be exercised through: (1) Local governments' administration of the national flood insurance program regulation requirements, (2) the establishment of minimum state requirements for flood plain management, (3) the administration of flood plain management programs for local jurisdictions not participating in or meeting the requirements of the national flood insurance program, and (4) through the issuance of regulatory orders. This regulation shall be exercised over the planning, construction, operation and maintenance of any works, structures and improvements, private or public, which might, if

improperly planned, constructed, operated and maintained, adversely influence the regimen of a stream or body of water or might adversely affect the security of life, health and property against damage by flood water. [1987 c 523 § 2; 1935 c 159 § 3; RRS § 9663A-3. FORMER PART OF SECTION: 1939 c 85 § 1 now codified as RCW 86.16.025 and 86.16.027.]

Appeal of orders under RCW 86.16.020: RCW 43.21B.310.

86.16.025 Authority of department. With respect to such features as may affect flood conditions, the department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the flood plain or floodway of any stream or body of water in this state. [1987 c 109 § 50; 1939 c 85 § 1; 1935 c 159 § 6; RRS § 9663A-6. Formerly RCW 86.16.020, part.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.027 Authority of supervisor—Rules.

Reviser's note: RCW 86.16.027 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.030 Authority of supervisor—Employment and purchasing.

Reviser's note: RCW 86.16.030 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.031 Duties of the department of ecology. The department of ecology shall:

(1) Review and approve all county, city, or town flood plain management ordinances pursuant to RCW 86.16.041;

(2) Provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;

(3) Provide technical assistance to local governments in the administration of their flood plain management ordinances;

(4) Provide local governments and the general public with information related to the national flood insurance program;

(5) Provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements;

(6) Assume regulatory authority for flood plain management activities in the event of failure by the local government to comply with the requirements of this chapter; and

(7) Establish minimum state requirements that equal or exceed the minimum federal requirements for the national flood insurance program. [1987 c 523 § 3.]

86.16.035 Department of ecology—Control of dams and obstructions. The department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters. [1987 c 523 § 9; 1987 c 109 § 53; 1935 c 159 § 8; RRS § 9663A-8. Formerly RCW 86.16.030, part.]

Reviser's note: This section was amended by 1987 c 109 § 53 and by 1987 c 523 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.040 Authority of supervisor—Survey of flood control needs.

Reviser's note: RCW 86.16.040 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.041 Flood plain management ordinances and amendments—Filing with the department of ecology—Disapproval by the department. (1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new flood plain management ordinance or amendment to any existing flood plain management ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction of residential structures except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures

identified as historic places shall not be included in the fifty percent determination;

(b) Floodproofing or elevating lowest floor levels for nonresidential structures;

(c) Elevating lowest floor levels for residential structures;

(d) The minimum requirements of the national flood insurance program; or

(e) Any minimum state requirements established by rule by the department of ecology. [1987 c 523 § 4.]

86.16.051 Basis for state and local flood plain management. The basis for state and local flood plain management regulation shall be the areas designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Best available information shall be used if these maps are not available or sufficient. [1987 c 523 § 5.]

86.16.060 Flood control zones—Establishment by supervisor.

Reviser's note: RCW 86.16.060 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.061 Adoption of rules. The department of ecology may adopt such rules as are necessary to implement this chapter. [1987 c 523 § 6.]

86.16.065 Flood control zones—Alteration and revision.

Reviser's note: RCW 86.16.065 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.067 Flood control zones—Notice—Publication—Contents—Objections.

Reviser's note: RCW 86.16.067 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.070 Flood control zones—Presumption as to notice—Order establishing or changing zone.

Reviser's note: RCW 86.16.070 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.071 Chapter not to create liability for damages against the state. The exercise by the state of the authority, duties, and responsibilities as provided in this chapter shall not imply or create any liability for any damages against the state. [1987 c 523 § 7.]

86.16.080 Permit for improvement—How obtained—Emergencies.

Reviser's note: RCW 86.16.080 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.081 Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority. (1) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board. [1987 c 523 § 8.]

86.16.090 Improvements without permit as nuisance—Abatement.

Reviser's note: RCW 86.16.090 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Nuisances: Chapters 7.48, 9.66 RCW.

86.16.110 Appeals. Any person, association or corporation, public, municipal or private, feeling aggrieved at any order, decision, or determination of the ~~((state supervisor of flood control made))~~ department or director pursuant to this chapter, affecting his interest, may have the same reviewed ~~((by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the matter affected, or a portion thereof is situated. The proceedings in every such appeal shall be heard and tried by the court and shall be informal and summary, but full opportunity to be heard and present~~

~~evidence shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal containing a statement of the substance of the order, decision, or determination complained of and the manner in which the same injuriously affects the appellant's interests, shall have been served personally upon the state supervisor of flood control, or by registered mail, at his office at the state capitol, within twenty days following the rendition of the order, decision or determination appealed from and communication thereof in writing to the person affected thereby. No bond shall be required except a stay is desired and an appeal shall not be a stay, unless within five days following the service of notice of appeal a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. Costs shall be paid as in civil cases brought in the superior court, and the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. In all court proceedings under or pursuant to this section the decision of the state supervisor of flood control shall be prima facie correct. The attorney general shall be the legal advisor of the state supervisor of flood control and shall represent him in all proceedings whenever so requested)) pursuant to RCW 43.21B.310. [1987 c 109 § 23; 1935 c 159 § 17; RRS § 9663A-17.]~~

Reviser's note: This section was also repealed by 1987 c 523 § 12, without cognizance of its amendment by 1987 c 109 § 23.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.110 Appeals. [1935 c 159 § 17; RRS § 9663A-17.] Repealed by 1987 c 523 § 12.

Reviser's note: This section was also amended by 1987 c 109 § 23 without cognizance of the repeal thereof.

86.16.120 Flood damages defined. Damages within the meaning of this chapter shall include harmful inundation, water erosion of soil, stream banks and beds, stream channel shifting and changes, harmful deposition by water of eroded and shifting soils and debris upon property or in the beds of streams or other bodies of water, damages by high water to public roads, highways, bridges, utilities and to works built for protection against floods or inundation, the interruption by floods of travel, communication and commerce, and all other high water influences and results which injuriously affect the public health and the safety of property. [1935 c 159 § 2; RRS § 9663A-2.]

86.16.130 Supervisor's other powers and duties unaffected by chapter.

Reviser's note: RCW 86.16.130 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.150 Severability—1935 c 159. If any section or provisions of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1935 c 159 § 20; RRS § 9663A-20.]

86.16.160 Local programs not prevented. Nothing in this chapter shall prevent any county, city or town from

establishing, pursuant to any authority otherwise available to them, flood control regulation programs and related land use control measures in areas which are subject to flooding or flood damages. [1973 c 75 § 2.]

86.16.170 "Supervisor of flood control" defined.

Reviser's note: RCW 86.16.170 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.180 Processing of permits and authorizations for emergency water withdrawal and facilities to be expedited. All state and local agencies with authority under this chapter to issue permits or other authorizations for emergency water withdrawal and facilities pursuant to RCW 43.83B.300 through 43.83B.345 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1987 c 343 § 7.]

Severability—1987 c 343: See note following RCW 43.83B.300.

86.16.900 Chapter liberally construed. The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their object. [1935 c 159 § 19; RRS § 9663A-19.]

Chapter 86.18

FLOOD CONTROL CONTRIBUTIONS

Sections

86.18.010	Declaration of purpose.
86.18.030	Conditions and limitations on expenditures and contributions from appropriations—Warrants.
86.18.900	Construction—1967 ex.s. c 136.
86.18.910	Severability—1967 ex.s. c 136.

86.18.010 Declaration of purpose. Economic development and growth of the state is dependent on the control of flood waters. The legislature declares, in the exercise of its sovereign and police powers, that the purpose of this chapter is to provide for contributions of funds for assisting political subdivisions of the state in the protection of lands from inundation; the protection of public highways; the control of storm drainage; the maintenance of stream channels and water courses; and the protection of life and property.

It is the intent of the legislature that funds be provided to political subdivisions of the state to assist in the development of those flood control improvements and projects, which cannot be reasonably and practicably financed through the normal methods of financing available to such political subdivisions. [1967 ex.s. c 136 § 1.]

86.18.030 Conditions and limitations on expenditures and contributions from appropriations—Warrants. Funds shall be expended and contributions made to a

political subdivision of the state from flood control appropriations only after:

(1) The project for which the funds are to be used has been approved by the department of ecology in accordance with the regulatory provisions of chapter 86.16 RCW.

(2) Engineering studies and plans have been made and filed with the county engineer of the county in which the project is located, or the county engineers of all counties in which the project is located, if it is located in more than one county.

(3) The estimate of cost of acquisition of necessary lands, rights of way and construction of the project or improvements, together with adequate supporting data have been completed and filed with the department of ecology.

(4) A comprehensive plan for the area involved has been completed and filed with the department.

(5) The political subdivision desiring a contribution has made an application for a contribution to the department showing the estimated cost of the project and the requested contribution.

(6) Federal funds are available for contribution for payment of a portion of the cost of the project.

The director of ecology is authorized to determine when these conditions have been met and to request the proper warrant for the state's contribution. Contributions to a political subdivision for a specific project shall not exceed fifty percent of the cost of acquisition of necessary lands and rights of way, and construction of the project or works of improvement. [1987 c 109 § 63; 1980 c 32 § 12; 1967 ex.s. c 136 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.18.900 Construction—1967 ex.s. c 136. This legislative proposal shall be complete authority for the accomplishment of purposes hereby authorized, and shall be liberally construed to accomplish its purposes. [1967 ex.s. c 136 § 4.]

86.18.910 Severability—1967 ex.s. c 136. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 136 § 5.]

Chapter 86.24

FLOOD CONTROL BY STATE IN COOPERATION WITH FEDERAL AGENCIES, ETC.

Sections

86.24.010	Declaration of policy.
86.24.020	Cooperation authorized.
86.24.030	Contracts authorized—Extent of participation.
86.24.040	Contracts between flood control districts and other governmental units.
86.24.050	State participation where state interest affected.

86.24.010 Declaration of policy. It is the purpose of the state of Washington, in the exercise of its sovereign and police powers, and in the interests of public welfare, to establish a state policy for the control of floods to the extent practicable and by economically feasible methods. [1935 c 163 § 1; RRS § 9662-1.]

86.24.020 Cooperation authorized. The department of ecology, in cooperation with the corps of engineers of the United States army, and any other agencies of the United States, and in cooperation with any official, agency or institution of the state and any flood control district created under the laws of the state, and any county, or any counties acting jointly pursuant to RCW 86.13.010 through 86.13.090, shall act for the state in the formulation of plans for the control of floods in the several flood areas of the state, and shall consider the extent to which the state should participate therein with the United States and/or any flood control district, or county, or counties so acting jointly. In case of federal participation, the plan of development and the surveys, plans and specifications for such flood control projects shall be in accordance with the federal requirements therefor. [1987 c 109 § 64; 1935 c 163 § 2; RRS § 9662-2.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.24.030 Contracts authorized—Extent of participation. The state director of conservation, when state funds shall be available therefor, shall have authority on behalf of the state to enter into contracts with the United States or any agency thereof and/or with any such flood control district, county, or counties so acting jointly, for flood control purposes for any such flood control district, county or counties so acting jointly, the amount of the state's participation in any such contract to be such sum as may be appropriated therefor, or, in event of unallocated state appropriations for flood control purposes, in such necessary sum as to any such contract as he shall determine. [1935 c 163 § 4; RRS § 9662-4.]

86.24.040 Contracts between flood control districts and other governmental units. In any case where the boundaries of any flood control district shall embrace all or any part of any county, city, town, diking, or drainage district, subject to flood conditions, the governing authorities thereof may contract with the directors of such flood control district, with the written approval of the state director, for the maintenance, repair, renewal and extension of any existing flood control works of such county, city, town, diking, or drainage district, situated within the flood control district, and for the construction and maintenance of specific flood control projects, for such term of years and for the payment to such flood control district therefor of such annual sums as in said contract specified. [1979 ex.s. c 30 § 19; 1935 c 163 § 6; RRS § 9662-6.]

86.24.050 State participation where state interest affected. State participation in flood control projects shall be in such as are affected with a state interest and to such extent as the legislature may determine. [1935 c 163 § 3; RRS § 9662-3.]

Chapter 86.26

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

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86.26.100	Agreement as to participation—Limit on amount.
86.26.105	Comprehensive flood control management plan—Requirements—Time for completion.

86.26.005 Declaration of purpose. It is the purpose of the state in the exercise of its sovereign and police powers and in the interest of public welfare, to establish a state and local participating flood control maintenance policy. [1951 c 240 § 2.]

86.26.007 Flood control assistance account—Use—Earnings. The flood control assistance account is hereby established in the state treasury. At the beginning of each biennium after June 30, 1985, the state treasurer shall transfer from the general fund to the flood control assistance account an amount of money which, when combined with money remaining in the account from the previous biennium, will equal four million dollars. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. All earnings of investments of balances in the flood control assistance account shall be credited to the general fund. [1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Effective date—1985 c 57: See note following RCW 15.52.320.

86.26.010 Administration and enforcement. The department of ecology shall have charge for the state of the administration and enforcement of all laws relating to flood control. [1984 c 212 § 2; 1951 c 240 § 3.]

86.26.040 Duties of local engineer—Approval of plans, etc., by department of ecology—Grants to prepare comprehensive flood control management plan. Whenever state grants under this chapter are used in a flood control maintenance project, the engineer of the county within which the project is located shall approve all plans for the specific project and shall supervise the

work. The approval of such plans, construction and expenditures by the department of ecology, in consultation with the department of fisheries and the *department of game, shall be a condition precedent to state participation in the cost of any project beyond planning and designing the specific project.

Additionally, state grants may be made to counties for preparation of a comprehensive flood control management plan required to be prepared under RCW 86.26-.050. [1986 c 46 § 2; 1984 c 212 § 3; 1951 c 240 § 6.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

86.26.050 Projects in which state will participate—Allocation of funds. (1) State participation shall be in such preparation of comprehensive flood control management plans and flood control maintenance projects as are affected with a general public and state interest, as differentiated from a private interest, and as are likely to bring about public benefits commensurate with the amount of state funds allocated thereto.

(2) No participation for flood control maintenance projects may occur with a county or other municipal corporation unless the director of ecology has approved the flood plain management activities of the county, city, or town having planning jurisdiction over the area where the flood control maintenance project will be, on the one hundred year flood plain surrounding such area.

The department of ecology shall adopt rules concerning the flood plain management activities of a county, city, or town that are adequate to protect or preclude flood damage to structures, works, and improvements, including the restriction of land uses within a river's meander belt or floodway to only flood-compatible uses. Whenever the department has approved county, city, and town flood plain management activities, as a condition of receiving an allocation of funds under this chapter, each revision to the flood plain management activities must be approved by the department of ecology, in consultation with the department of fisheries and the *department of game.

No participation with a county or other municipal corporation for flood control maintenance projects may occur unless the county engineer of the county within which the flood control maintenance project is located certifies that a comprehensive flood control management plan has been completed and adopted by the appropriate local authority, or is being prepared for all portions of the river basin or other area, within which the project is located in that county, that are subject to flooding with a frequency of one hundred years or less.

(3) Participation for flood control maintenance projects and preparation of comprehensive flood control management plans shall be made from grants made by the department of ecology from the flood control assistance account. Comprehensive flood control management plans, and any revisions to the plans, must be approved by the department of ecology, in consultation with the department of fisheries and the *department of game. [1986 c 46 § 3; 1985 c 454 § 1; 1984 c 212 § 4; 1951 c 240 § 7.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

86.26.060 Allocation of funds. Grants for flood control maintenance shall be so employed that as far as possible, funds will be on hand to meet unusual, unforeseeable and emergent flood conditions. Allocations by the department of ecology, for emergency purposes, shall in each instance be in amounts which together with funds provided by local authority, if any, under reasonable exercise of its emergency powers, shall be adequate for the preservation of life and property, and with due regard to similar needs elsewhere in the state. [1984 c 212 § 5; 1951 c 240 § 8.]

86.26.070 Flood control maintenance fund of municipal corporation—Composition—Use. Any municipal corporation subject to flood conditions, may establish in its treasury a flood control maintenance fund. Such fund may be maintained by transfer thereto of moneys derived from regular or special lawful levies for flood control purposes, moneys which may be lawfully transferred to it from any other municipal fund; and gifts and contributions received for flood control purposes. All costs and expenses for flood control maintenance purposes shall be paid out of said flood control maintenance fund, which fund shall not be used for any other purpose. [1951 c 240 § 9.]

86.26.080 Annual budget reports of municipal corporations—Allocation of funds. Any municipal corporation intending to seek state participating funds shall, within thirty days after final adoption of its annual budget for flood control purposes, report the amount thereof, to the engineer of the county within whose boundaries the municipal corporation lies. The county engineer shall submit such reports, together with reports from the county itself, to the department of ecology. On the basis of all such budget reports received, the department may thereupon prepare a tentative and preliminary plan for the orderly and most beneficial allocation of funds from the flood control assistance account for the ensuing calendar year. Soil conservation districts shall be exempted from the provisions of this section. [1984 c 212 § 6; 1951 c 240 § 10.]

86.26.090 Scope of maintenance in which state will participate. The state shall participate with eligible local authorities in maintaining and restoring the normal and reasonably stable river and stream channel alignment and the normal and reasonably stable river and stream channel capacity for carrying off flood waters with a minimum of damage from bank erosion or overflow of adjacent lands and property; and in restoring, maintaining and repairing natural conditions, works and structures for the maintenance of such conditions. The state shall likewise participate in the restoration and maintenance of natural conditions, works or structures for the protection of lands and other property from inundation or other damage by the sea or other bodies of water. Funds from the flood control assistance account shall not be available for maintenance of works or structures

maintained solely for the detention or storage of flood waters. [1984 c 212 § 7; 1951 c 240 § 11.]

86.26.100 Agreement as to participation—Limit on amount. State participation in the cost of any flood control maintenance project shall be provided for by a written memorandum agreement between the director of ecology and the legislative authority of the county submitting the request, which agreement, among other things, shall state the estimated cost and the percentage thereof to be borne by the state. In no instance, except on emergency projects, shall the state's share exceed one-half the cost of the project, to include project planning and design. However, grants to prepare a comprehensive flood control management plan required under RCW 86.26.050 shall not exceed seventy-five percent of the full planning costs, but not to exceed amounts for either purpose specified in rule and regulation by the department of ecology. [1986 c 46 § 4; 1984 c 212 § 8; 1951 c 240 § 12.]

86.26.105 Comprehensive flood control management plan—Requirements—Time for completion. A comprehensive flood control management plan shall determine the need for flood control work, consider alternatives to in-stream flood control work, identify and consider potential impacts of in-stream flood control work on the state's in-stream resources, and identify the river's meander belt or floodway. A comprehensive flood control management plan shall be completed and adopted within at least three years of the certification that it is being prepared, as provided in RCW 86.26.050.

If after this three-year period has elapsed such a comprehensive flood control plan has not been completed and adopted, grants for flood control maintenance projects shall not be made to the county or municipal corporations in the county until a comprehensive flood control plan is completed and adopted by the appropriate local authority. These limitations on grants shall not preclude allocations for emergency purposes made pursuant to RCW 86.26.060. [1986 c 46 § 5; 1984 c 212 § 9.]

Title 87

IRRIGATION

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- 87.04** Director divisions.
- 87.19** Refunding bonds—1923 act.
- 87.22** Refunding bonds—1929 act.
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- 87.48** Indemnity to state on land settlement contracts.
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Reviser's note: Throughout Title 87 RCW appear references to certain state officers and agencies, the powers and duties of which have devolved upon other officers and agencies in whole or in part by later enactments. Such powers and duties have devolved through a chain of statutes as follows:

Division of hydraulics: 1917 c 117 §§ 6, 7, 8 (state hydraulic engineer); 1921 c 7 §§ 61, 66, 72, and 135 (division of hydraulics in department of conservation and development; supervisor of hydraulics); 1951 c 57 §§ 1, 2, 3 (division of water resources in the department of conservation and development; supervisor of water resources); 1957 c 215 §§ 19, 20, 21 (name of department of conservation and development changed to department of conservation); 1967 c 242 §§ 8 and 20 (department of conservation abolished and division of water resources transferred to department of water resources); 1970 ex.s. c 62 §§ 6 and 26 (department of water resources abolished and powers, duties, and functions transferred to newly created department of ecology); see also RCW 43.17.010, 43.17.020, 43.21.010, 43.21.130, 43.21A.060, former RCW 43.21A.300, now decodified, RCW 43.27A.080, 43.27A.180.

Director and department of conservation and development: See division of hydraulics, *supra*.

State hydraulics engineer: See division of hydraulics, *supra*.

Supervisor of hydraulics: See division of hydraulics, *supra*.

Supervisor of reclamation: See state reclamation board.

Supervisor, division of water resources: See division of hydraulics, *supra*.

Commissioner of public lands: 1957 c 38 (department of natural resources) §§ 1, 4, 5, 7, 13, 15, 16; see also RCW 43.30.010, 43.30.040, 43.30.050, 43.30.070, 43.30.130, 43.30.150, 43.30.160.

State land commissioner: See commissioner of public lands, *supra*.

State reclamation board: 1919 c 158; 1921 c 7 §§ 64, 70, 135 (division and supervisor of reclamation in the department of conservation and development); 1957 c 215 §§ 19, 20, 21 (department and director name changed to conservation); see also RCW 43.21.010, 43.21.110.

Washington state college: Name changed to Washington State University; 1959 c 77 § 1; RCW 28B.30.010.

Assessments against public lands: Chapter 79.44 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

County water and drainage systems, authority, procedure: Chapter 36-94 RCW.

Disincorporation of irrigation or reclamation districts located in class A or AA counties and inactive for five years: Chapter 57.90 RCW.

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Chapter 87.03

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- 87.03.840 Chapter supplementary—When.
- 87.03.900 Construction—1913 c 165.
- 87.03.905 Severability—1921 c 129.
- 87.03.910 Severability—1923 c 138.
- 87.03.915 Severability—1935 c 128.

Reviser's note: The language "this act", "this chapter" and words of similar import appear throughout chapter 87.03 RCW. This chapter is almost entirely comprised of the basic irrigation act of 1889-90 p 671 et. seq. as amended and as expressly added thereto by subsequent enactments. The chapter is codified in the session law order of the basic act with a few independent sections which are in pari materia being also codified herein. Many sections were added to the basic law by being expressly added to the chapter of the code or compilation in which the basic act was currently published at the time of the particular enactment. Similarly many sections have been amended by reference to the compilation number only. Some of these sections contain legislative language "this act", "this chapter", or both, which appear in the session law either as original legislative language or reenactments by the legislature of a compiler's translation. Therefore, throughout chapter 87.03 RCW such language is retained wherever it appears in the most recent session law enactment. Situations concerning effective dates of particular acts or having express restrictive application are otherwise specially noted.

Deferral of special assessments: Chapter 84.38 RCW.

Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners: RCW 57.90.100.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Plats, approval of plat within irrigation districts prohibited without provision for irrigation water: RCW 58.17.310.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

87.03.005 District proposed—Powers, when organized. Whenever fifty or a majority of the holders of title to, or of evidence of title to land susceptible of "irrigation" desire to organize an irrigation district for any or all of the purposes mentioned in RCW 87.03.010 and 87.03.015, they may propose the organization of an irrigation district in the manner provided herein; and when so organized, such district shall have all the powers that may now or hereafter be conferred by law. [1923 c 138 § 1; 1917 c 162 § 1; 1915 c 179 § 1; 1895 c 165 § 1; 1889-90 p 671 § 1; RRS § 7417. Formerly RCW 87-.01.020, part.]

87.03.010 Certain purposes for which district may be formed. An irrigation district may be organized or maintained for any or all the following purposes:

(1) The construction or purchase of works, or parts of same, for the irrigation of lands within the operation of the district.

(2) The reconstruction, repair or improvement of existing irrigation works.

(3) The operation or maintenance of existing irrigation works.

(4) The construction, reconstruction, repair or maintenance of a system of diverting conduits from a natural source of water supply to the point of individual distribution for irrigation purposes.

(5) The execution and performance of any contract authorized by law with any department of the federal government or of the state of Washington, for reclamation and irrigation purposes.

(6) The performance of all things necessary to enable the district to exercise the powers herein granted. [1923 c 138 § 2, part; RRS § 7417-1. Formerly RCW 87.01.010.]

87.03.013 Development of hydroelectric generation capabilities—Legislative finding, intent—Limitation.

The legislature finds that a significant potential exists for the development of the hydroelectric generation capabilities of present and future irrigation systems serving irrigation districts. The legislature also finds that the development of such hydroelectric generation capabilities is beneficial to the present and future electrical needs of the citizens of the state of Washington, furthers a state purpose and policy, and is in the public interest. The legislature further finds that it is necessary to revise and add to the authority of irrigation districts to obtain the most favorable interest rates possible in the financing of irrigation district projects which serve the agricultural community and hydroelectric facilities. It is the intent of the legislature to provide irrigation districts with the authority to develop these hydroelectric generation capabilities in connection with irrigation facilities. Further, it is the intent of the legislature that the development of hydroelectric generation capabilities pursuant to *this 1979 act not become the sole purpose or function of irrigation districts in existence on May 14, 1979, nor become a major function of irrigation districts created after that date. Nothing herein shall authorize an irrigation district to sell electric power or energy to any municipal corporation not engaged in the distribution of electric power or energy. [1979 ex.s. c 185 § 1.]

***Reviser's note:** For RCW section codification of this 1979 act, 1979 ex.s. c 185, see notes following this section.

Effective date—1979 ex.s. c 185: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1979 ex.s. c 185 § 24.] Because of this emergency section the effective date of 1979 ex.s. c 185 was May 14, 1979.

Severability—1979 ex.s. c 185: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 185 § 23.]

87.03.015 Certain powers of district enumerated. Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use, to acquire, construct, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, operate, and maintain, alone or jointly with other irrigation districts, boards of control, other municipal or quasi municipal corporations or cooperatives authorized to engage in the business of distributing electricity, or electrical companies subject to the jurisdiction of the utilities and transportation commission, hydroelectric facilities including but not limited to dams,

canals, plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission, or to other irrigation districts, and on such terms and conditions as the board of directors shall determine, and to enter into contracts with other irrigation districts, boards of control, other municipal or quasi municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission: *Provided*, That no contract entered into by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct and reconstruct ditches, laterals, pipe lines and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install and maintain as a part of the irrigation district's water system the necessary water

mains and fire hydrants to make water available for fire fighting purposes; and in addition any such irrigation district shall have the authority to repair, operate and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission to jointly acquire, construct, own, operate, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works.

(8) To acquire from a water district wholly within the irrigation district's boundaries, by a conveyance without cost, the water district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the conveyance the irrigation district must agree to relieve the water district of responsibility for maintenance and repair of the system. Any such water district is authorized to make such a conveyance if all indebtedness of the water district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water district's electors voting at a general or special election.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law. [1979 ex.s. c 185 § 2; 1967 c 206 § 1; 1965 c 141 § 1; 1943 c 57 § 1; 1941 c 143 § 1; 1933 c 31 § 1; 1923 c 138 § 2, part; RRS § 7417-2. Formerly RCW 87.01.210, part.]

Effective date—Severability—1979 ex s. c 185: See notes following RCW 87.03.013.

District bond elections: RCW 87.03.200.

Heating systems authorized: RCW 35.97.020.

Prerequisite to furnishing water or power outside of district: RCW 87.03.115.

87.03.016 District may provide street lighting—
Limitations. In addition to other powers conferred by law, an irrigation district is authorized to construct, purchase, lease, or otherwise acquire, maintain, and operate a system for lighting public streets and highways and to enter into a contract or contracts with electric utilities, either public or private, to provide that service. However, no contract entered into by the board for providing street lighting for a period exceeding ten years is binding upon the district unless ratified by a majority vote of the electors of the district at an election called, held, and canvassed for that purpose in the same manner as provided by law for district bond elections.

The authority granted by this section applies only to an irrigation district that has begun the construction, purchase, lease, or acquisition of a street lighting system by January 1, 1984, or has entered into a contract for that service by that date. [1984 c 168 § 1.]

87.03.017 District may assist residential owners in financing for conservation of energy—When—

Plan—Limitations. Any irrigation district engaged in the distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of residential structures in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures pursuant to an energy conservation plan adopted by the irrigation district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the irrigation district could acquire to meet future demand. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the residential structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment.

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the irrigation district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation.

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1982 c 42 § 1. Prior: 1981 c 345 § 3.]

87.03.018 Creation of legal authority to carry out powers—Method—Indebtedness. Two or more irrigation districts may create a separate legal authority to carry out any or all of the powers described in RCW 87.03.015. To enable such a legal authority to carry out its delegated powers, the irrigation districts creating the authority may assign, convey, or otherwise transfer to it any or all of their respective property, rights, or obligations, including, without limitation, the power to issue revenue obligations and the power of condemnation. Such a legal authority shall be created and organized by contract in the manner described in chapter 39.34 RCW and shall be a separate legal entity.

A separate legal authority shall only have power to incur indebtedness that is repayable from rates, tolls, charges, or contract payments for services or electricity

provided by the authority and to pledge such revenues for the payment and retirement of indebtedness issued for the construction or acquisition of hydroelectric facilities. An authority shall not have power to levy taxes or to impose assessments for the payment of obligations of the authority. Every bond or other evidence of indebtedness issued by an authority shall provide (1) that repayment shall be limited solely to the revenues of the authority; and (2) that no member of the authority shall be obligated to repay directly or indirectly any obligation of the authority except to the extent of fair value for services actually received from the authority. No member may pledge its revenues to support the issuance of revenue bonds or other indebtedness of an authority. [1984 c 168 § 5; 1981 c 62 § 1.]

87.03.020 Organization of district—Petition—Bond—Notice—Hearing—Order—Notice of election. For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall contain the following:

(1) A description of the lands to be included in the operation of the district, in legal subdivisions or fractions thereof, and the name of the county or counties in which said lands are situated.

(2) The signature and post office address of each petitioner, together with the legal description of the particular lands within the proposed district owned by said respective petitioners.

(3) A general statement of the probable source or sources of water supply and a brief outline of the plan of improvement, which may be in the alternative, contemplated by the organization of the district.

(4) A statement of the number of directors, either three or five, desired for the administration of the district and of the name by which the petitioners desire the district to be designated.

(5) Any other matter deemed material.

(6) A prayer requesting the board to take the steps necessary to organize the district.

The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondsmen will pay all of the cost in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks (three issues) before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice signed by the clerk of the board of county commissioners stating the time of the meeting at which the same will be presented. There shall also be published a notice of the hearing on said petition in a newspaper published at

Olympia, Washington, to be designated by the director of the department of conservation and development from year to year, which said notice shall be published for at least two weeks (three issues) prior to the date of said meeting and shall contain the name of the county or counties and the number of each township and range in which the lands embraced within the boundaries of the proposed district are situated, also the time, place and purpose for said meeting, which said notice shall be signed by the petitioner whose name first appears upon the said petition. If any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. The said notice, together with a map of the district, shall also be served by registered mail at least thirty days before the said hearing upon the state director of the department of conservation and development at Olympia, Washington, who shall, at the expense of the district in case it is later organized, otherwise at the expense of the petitioners' bondsmen, make such investigation, through the division of hydraulics, of the sufficiency of the source and supply of water for the purposes of the proposed district, as he may deem necessary, and file a report of his findings, together with a statement of his costs, with the board of county commissioners at or prior to the time set for said hearing. When the petition is presented, the board of county commissioners shall hear the same, shall receive such evidence as it may deem material, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing shall establish and define the boundaries of the district along such lines as in the judgment of the board will best reclaim the lands involved and enter an order to that effect: *Provided*, That said board shall not modify the boundaries so as to except from the operation of the district any territory within the boundaries outlined in the petition, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which a water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited, be included within such district; any lands included within any district, which have a partial or full water right shall be given equitable credit therefor in the apportionment of the assessments in this act provided for: *And provided further*, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district.

At said hearing the board shall also give the district a name and shall order that an election be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this act and for the purpose of electing directors.

The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which

said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks (three issues) prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lies within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," and "Irrigation District—No," and also the names of persons to be voted for as directors of the district: *Provided*, That where in this act publication is required to be made in a newspaper of any county, the same may be made in a newspaper of general circulation in such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose. [1923 c 138 § 3; 1921 c 129 § 1; 1919 c 180 § 1; 1915 c 179 § 2; 1913 c 165 § 1; 1895 c 165 § 2; 1889–90 p 671 § 2; RRS § 7418. Formerly RCW 87.01.020, part, 87.01.030, 87.01.040 and 87.01.050.]

87.03.025 State lands situated in or taken into district—Procedure—Assessments, collection. Whenever public lands of the state are situated in or taken into an irrigation district they shall be treated the same as other lands, except as hereinafter provided. The commissioner of public lands shall be served with a copy of the petition proposing to include such lands, together with a map of the district and notice of the time and place of hearing thereon, at least thirty days before the hearing, and if he determines that such lands will be benefited by being included in the district he shall give his consent thereto in writing. If he determines that they will not be benefited he shall file with the board a statement of his objections thereto.

Any public lands of the state which are situated within the boundaries of an irrigation district, but which were not included in the district at the time of its organization, may be included after a hearing as herein provided.

Whenever the commissioner or any interested person desires to have state public lands included in an existing district, he shall file a request to that effect in writing with the district board, which shall thereupon fix a time and place for hearing the request and post notice thereof in three public conspicuous places in the district, one of which shall be at the place of hearing, at least twenty days before the hearing, and send by registered mail a copy of the notice to the commissioner. The notice shall describe the lands to be included and direct all persons objecting to such inclusion to appear at the time and place stated and present their objections. At the hearing the district board shall consider all objections and may adjourn to a later date, and by resolution determine the matter, and its determination shall be final: *Provided*, That no such lands shall be included in a district without the written consent of the commissioner of public lands.

Any public lands of the state situated in any irrigation district shall be subject to the provisions of the laws of this state relating to the collection of irrigation district assessments to the same extent and in the same manner in which lands of like character held under private ownership are subject thereto, but collection and payment of the assessments shall be governed solely by the provisions of chapter 79.44 RCW. [1963 c 20 § 13; 1951 2nd ex.s. c 15 § 1; 1951 c 212 § 1; 1923 c 138 § 4; 1921 c 129 § 2; 1919 c 180 § 2; RRS § 7419. Formerly RCW 87.01.060.]

Irrigation district assessments: RCW 87.03.240 through 87.03.305.

87.03.030 Elections are governed by irrigation district laws. All elections of irrigation districts, general or special, for any district purpose and in any county of the state shall be called, noticed, and conducted in accordance with the laws of the state, specifically relating to irrigation districts. [1951 c 201 § 1. Formerly RCW 87.01.095.]

Validation—1951 c 201: "All irrigation district elections heretofore called, noticed and conducted for any district purpose in accordance with the laws of the state, specifically relating to irrigation districts irrespective of any contrary general election laws; and any irrigation district election heretofore called, noticed and conducted in accordance with said irrigation district laws is hereby approved and confirmed." [1951 c 201 § 2.]

Ballots, declaration of candidacy: RCW 87.03.075.

Certain elections—Districts of two hundred thousand acres: RCW 87.68.060.

Times for holding elections and primaries: Chapter 29.13 RCW.

87.03.031 Absentee voting—Certification of inconvenience. Any qualified district elector who certifies as provided in RCW 87.03.032 through 87.03.034 that he cannot conveniently be present to cast his ballot at his proper election precinct on the day of any irrigation district election shall be entitled to vote by absentee ballot in such election in the manner herein provided. [1961 c 105 § 2. Formerly RCW 87.01.096.]

87.03.032 Absentee voting—Notice of election, contents—Ballot and form of certificate of qualifications to be furnished. The notice of election shall conform to the requirements for election notices provided by Title 87 RCW for the election being held, and shall specify in addition that any qualified district elector who certifies that he cannot conveniently be present at his proper election precinct on the day of election may vote by absentee ballot, and that a ballot and form of certificate of qualifications will be furnished to him on written request being made of the district's secretary. The requisite ballot and a form of certificate of qualifications shall be furnished by the district's secretary to any person who prior to the date of election makes written request therefor, stating that he is a qualified district elector. Such ballot and form may be furnished also to qualified district electors in any way deemed to be convenient without regard to requests having been made therefor. [1961 c 105 § 3. Formerly RCW 87.01.097.]

87.03.033 Absentee voting—Requirements for ballot to be counted—Statement of qualifications—Form of ballot. (1) To be counted in a given election, an absentee ballot must conform to these requirements:

(a) It must be sealed in an unmarked envelope and delivered to the district's principal office prior to the close of the polls on the day of that election; or be sealed in an unmarked envelope and mailed to the district's secretary, postmarked not later than midnight of that election day and received by the secretary within five days of that date.

(b) The sealed envelope containing the ballot shall be accompanied by a certificate of qualifications stating, with respect to the voter, his name, age, citizenship, residence, that he holds title or evidence of title to lands within the district which, under RCW 87.03.045 entitles him to vote in the election, and that he cannot conveniently be present to cast his ballot at his proper election precinct on election day.

(c) The statements in the certificate of qualifications shall be certified as correct by the voter by the affixing of his signature thereto in the presence of a witness who is acquainted with the voter, and the voter shall enclose and seal his ballot in the unmarked envelope in the presence of this witness but without disclosing his vote. The witness, by affixing his signature to the certificate of qualifications, shall certify that he is acquainted with the voter, that in his presence the voter's signature was affixed and the ballot enclosed as required in this paragraph.

(2) The form of statement of qualifications and its certification shall be substantially as prescribed by the district's board of directors. This form may also provide that the voter shall describe all or some part of his lands within the district which, under RCW 87.03.045 entitles him to vote in the election, but a voter otherwise qualified shall not be disqualified because of the absence or inaccuracy of the description so given. The regular form of irrigation district ballot shall be used by absentee voters. [1961 c 105 § 4. Formerly RCW 87.01.098.]

87.03.034 Absentee voting—How incoming ballots are handled—Canvass—Statement of result of both regular and absentee ballots. (1) Absentee ballots shall be accumulated and kept, unopened, by the district's secretary until the time in which such ballots may be received is closed. The secretary shall deliver them to the board of directors as early as practicable on the following day. That board shall proceed at once to determine whether the voters submitting absentee ballots are qualified so to vote and to count and tally the votes of those so determined to be qualified. The board shall make, record, and certify the result of its determinations and count; and promptly thereafter it shall deliver the ballots, certificates of qualifications, and its certificate to the district's secretary. The provisions of RCW 87.03.100 with respect to recount shall govern also in the case of absentee ballots.

(2) On the completion of the canvass of the regular returns of the several election precincts as provided in RCW 87.03.105, the board of directors shall canvass the

returns of the absentee votes and declare the result thereof in substantially the same manner as provided for the returns of the votes cast in the regular manner. Thereupon the statement of the result conforming as nearly as practicable to the requirements of RCW 87.03.110 shall be made covering both regular and absentee votes. [1961 c 105 § 5. Formerly RCW 87.01.099.]

87.03.035 Elections to form district—How conducted. The board of county commissioners shall establish a convenient number of election precincts in the proposed district and define the boundaries thereof, and designate a polling place and appoint the necessary election officers for each precinct; which precincts may thereafter be changed by the district board. The election shall be conducted as nearly as practicable in the manner provided for the election of directors. Where a non-assessable area is situated in a district, any notice, delinquent list, or other announcement required by this title to be posted, may be posted in the area and any election may be held therein. [1955 c 57 § 2. Prior: 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3, part; RRS § 7420, part. Formerly RCW 87.01.070.]

87.03.040 Elections to form district—Canvass of returns—Order. The board of county commissioners shall meet on the second Monday after the election and canvass the returns, and if it appears that at least two-thirds of all the votes cast are in favor of the district the board shall by an order declare the district duly organized and shall declare the qualified persons receiving the highest number of votes to be duly elected directors, and shall cause a certified copy of the order to be filed for record in the offices of the auditor and assessor of each county in which any portion of the district is situated. From the date of the filing the organization of the district shall be complete and the directors may, upon qualifying, enter immediately upon the duties of their office, and shall hold office until their successors are elected and qualified. Upon filing the order, the county assessor shall write the name of the district on the permanent tax roll in a column provided for that purpose opposite each description of land in the district. Such column shall be carried forward each year on the current tax roll. In the event of a change in the boundaries of a district, the assessor shall note it in the column upon the tax roll. [1955 c 57 § 3. Prior: 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3, part; RRS § 7420, part. Formerly RCW 87.01.080.]

87.03.045 Qualifications of voters and directors—Districts of two hundred thousand acres. In districts with two hundred thousand acres or more, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to land in the district or proposed district shall be entitled to vote therein. He shall be entitled to one vote for the first ten acres of said land or fraction thereof and one additional vote for all of said land over ten acres. A

majority of the directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes shall be considered in ascertaining the result of the election. Where land is community property both the husband and wife may vote if otherwise qualified. An agent of a corporation owning land in the district, duly authorized in writing, may vote on behalf of the corporation by filing with the election officers his instrument of authority. An elector resident in the district shall vote in the precinct in which he resides, all others shall vote in the precinct nearest their residence. [1985 c 66 § 1; 1971 ex.s. c 292 § 72; 1961 c 192 § 12; 1955 c 57 § 4. Prior: 1953 c 122 § 1; 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3; RRS § 7420, part. Formerly RCW 87.01.090.]

Severability—1985 c 66: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 66 § 6.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Certain elections—Districts of two hundred thousand acres: RCW 87.68.060.

87.03.051 Qualifications of voters and directors—Districts of less than two hundred thousand acres. In districts with less than two hundred thousand acres, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to assessable land in the district or proposed district shall be entitled to vote therein, and to be recognized as an elector. A domestic corporation owning land in the district shall be recognized as an elector. "Ownership" shall mean the aggregate of all assessable acres owned by an elector, individually or jointly, within one district. Voting rights shall be allocated as follows: Two votes for each five acres of assessable land or fraction thereof. No one ownership may accumulate more than forty-nine percent of the votes in one district. If assessments are on the basis of shares instead of acres, an elector shall be entitled to two votes for each five shares or fraction thereof. The ballots cast for each ownership of land or shares shall be exercised by common agreement between electors or when land is held as community property, the accumulated votes may be divided equally between husband and wife. Except for community property ownership, in the absence of the submission of the common agreement to the secretary of the district at least twenty-four hours before the opening of the polls, the election board shall recognize the first elector to appear on election day as the elector having the authority to cast the ballots for that parcel of land for which there is more than one ownership interest. A majority of the directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes shall be considered in ascertaining the result of the

election. An agent of a domestic corporation owning land in the district, duly authorized in writing, may vote on behalf of the corporation by filing with the election officers his instrument of authority. An elector resident in the district shall vote in the precinct in which he resides, all others shall vote in the precinct nearest their residence. No director shall be qualified to take or retain office unless he holds title or evidence of title to land within the district. [1985 c 66 § 2.]

Severability—1985 c 66: See note following RCW 87.03.045.

87.03.071 Certain districts—Individual ownerships—Two votes. In any irrigation district where more than fifty percent of the total acreage of the district is owned in individual ownerships of less than five acres, each elector who is otherwise qualified to vote pursuant to RCW 87.03.045 shall be entitled to two votes regardless of the size of ownership. Each ownership shall be represented by two votes. If there are multiple owners or joint owners of a single ownership, the owners shall decide among themselves what their two votes shall be. If the ownership is held as community property, the husband shall be entitled to one vote and the wife shall be entitled to one vote or they may vote by common agreement. [1985 c 66 § 3.]

Severability—1985 c 66: See note following RCW 87.03.045.

87.03.075 Ballots in all elections—Declaration of candidacy—Petition of nomination—When election not required. Voting in an irrigation district shall be by ballot. Ballots shall be of uniform size and quality, provided by the district, and for the election of directors shall contain only the names of the candidates who have filed with the secretary of the district a declaration in writing of their candidacy, or a petition of nomination as hereinafter provided, not later than five o'clock p.m. on the first Monday in November. Ballots shall contain space for sticker voting or for the writing in of the name of an undeclared candidate. Ballots shall be issued by the election board according to the number of votes an elector is entitled to cast. A person filing a declaration of candidacy, or petition of nomination as hereinafter provided, shall designate therein the position for which he is a candidate. No ballots on any form other than the official form shall be received or counted.

In any election for directors where the number of votes which may be received will have no bearing on the length of the term to be served, the candidates for the position of director, in lieu of filing a declaration of candidacy hereunder, shall file with the secretary of the district a petition of nomination signed by at least ten qualified electors of the district, or of the division if the district has been divided into director divisions, not later than five o'clock p.m. on the first Monday in November. If, after the expiration of the date for filing petitions of nomination, it appears that only one qualified candidate has been nominated thereby for each position to be filled it shall not be necessary to hold an election, and the board of directors shall at their next meeting declare

such candidate elected as director. The secretary shall immediately make and deliver to such person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this paragraph shall not apply to any other irrigation district elections. [1985 c 66 § 4; 1981 c 345 § 1; 1981 c 208 § 1; 1963 c 68 § 1; 1961 c 105 § 1; 1941 c 171 § 2; Rem. Supp. 1941 § 7420-1. Formerly RCW 87.01.110.]

Severability—1985 c 66: See note following RCW 87.03.045.

87.03.080 Directors—Election—Terms—Increase and decrease. An election of directors in an irrigation district shall be held on the second Tuesday of December of each year, and the term of each director shall be three years from the first Tuesday of January following his election. The directors elected at the organization election shall serve until their successors are elected and qualified. At the first annual election occurring thirty days or more after the date of the order establishing the district, there shall be elected directors to succeed those chosen at the organization election. If the board consists of three directors the candidate receiving the highest number of votes shall serve a term of three years; the next highest, two years; and the next highest, one year. In case of five directors, the two candidates receiving the highest number of votes shall each serve a term of three years; the next two highest, two years; and the next highest, one year; or until successors are elected and qualified. In case of seven directors, the three candidates receiving the highest number of votes shall each serve a term of three years, the next two highest, two years, and the next two highest, one year, or until their successors are elected and qualified. Whenever a district with three directors desires to increase the number of its directors to five directors or whenever a district with five directors desires to increase the number of its directors to seven directors, the board of directors, acting on its own initiative or on the written petition of at least twenty electors of the district, shall submit the question to the electors of the district at a regular or special district election. In the event the electors by a majority of the votes cast favor an increase in the number of directors, there shall be elected at the next annual district election two additional directors. The person receiving the highest number of votes shall serve for a three year term and the next highest, a two year term.

The number of directors may be decreased to five or three, as the case may be, substantially in the same manner as that provided for the increase of directors. In case of three directors the term of one director only shall expire annually. [1961 c 192 § 14. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.100.]

87.03.081 Directors—Vacancies, how filled. A vacancy in the office of director shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of

the district were had. At the next annual election occurring thirty days or more after the date of the appointment, a successor shall be elected who shall take office on the first Tuesday in January following and shall serve for the remainder of the unexpired term.

A director appointed to fill a vacancy occurring after the expiration of the term of a director shall serve until his successor is elected and qualified. At the next election of directors occurring thirty days or more after the appointment, a successor shall be elected who shall take office on the first Tuesday in January next and shall serve for the term for which he was elected.

Failure on the part of any irrigation district to hold one or more annual elections for selection of officers, or otherwise to provide district officers shall not dissolve the district or impair its powers, where later officers for the district are appointed or elected and qualify as such and exercise the powers and duties of their offices in the manner provided by law. [1961 c 192 § 15. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.120.]

87.03.082 Directors—Oaths of office and official bonds—Secretary. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office, and shall execute a bond to the district in the sum of one thousand dollars, conditioned for the faithful discharge of his duties, which shall be approved by the judge of the superior court of the county where the district was organized, and the oath and bond shall be recorded in the office of the county clerk of that county and filed with the secretary of the board of directors. The secretary shall take and subscribe a written oath of office and execute a bond in the sum of not less than one thousand dollars to be fixed by the directors, which shall be approved and filed as in the case of the bond of a director. If a district is appointed fiscal agent of the United States to collect money for it, the secretary and directors and the district treasurer shall each execute such additional bonds as the secretary of the interior may require, conditioned for the faithful discharge of their duties which shall be approved, recorded, and filed as other official bonds. All such bonds shall be secured at the cost of the district. [1961 c 192 § 16. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.130.]

Conflicts of interest, irrigation district officers: RCW 42.23.030.

Conviction of public officer forfeits trust: RCW 9.92.120.

Director divisions: Chapter 87.04 RCW.

Misconduct of public officers: Chapter 42.20 RCW.

87.03.083 Directors—Recall and discharge. Every member of an irrigation district board of directors is subject to recall and discharge by the legal voters of such district pursuant to the provisions of chapter 29.82 RCW. [1979 ex.s. c 185 § 15.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.03.085 Post-organization district elections—Election boards—Notice. Fifteen days before any election held under this chapter, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for the precinct. If the board fails to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. However, in any irrigation district that is less than two hundred thousand acres in size and is divided into director divisions, the board of directors in its discretion may designate one polling place within the district to serve more than one election precinct. The board of directors of any irrigation district may designate the principal business office of the district as a polling place to serve one or more election precincts and may do so regardless of whether the business office is located within or outside of the boundaries of the district. If the board of directors does designate a single polling place for more than one election precinct, then the election officials appointed by the board of directors may serve more than one election precinct and the election officials may be electors of any of the election precincts for which they are the election board. [1987 c 123 § 1; 1984 c 168 § 2; 1889-90 p 674 § 5; RRS § 7422. Formerly RCW 87.01.140.]

87.03.090 Post-organization district elections—Election officers—Voting hours. The inspector is chairman of the election board, and may

First: Administer all oaths required in the progress of an election.

Second: Appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct may, if they deem it necessary, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at one o'clock p.m. on the afternoon of the election, and be kept open until eight o'clock p.m., when the

same must be closed. The provisions of the general election law of this state, concerning the form of ballots to be used shall not apply to elections held under this act: *Provided*, That any district elections called *before this act shall take effect shall be noticed and conducted in the manner prescribed by law in effect at the time the election is called. [1931 c 60 § 1; 1889–90 p 674 § 6; RRS § 7423. Formerly RCW 87.01.150.]

***Reviser's note:** The language "before this act shall take effect" in the proviso refers to 1931 c 60 which became effective on midnight June 10, 1931; see preface, 1931 session laws.

87.03.095 Post-organization district elections—Counting votes—Record of ballots. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened. As soon as the polls are closed, the judges shall open the ballot box and commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the inspector or one of the judges, who shall open them and read aloud the names of each person contained therein and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector or judge. The counting of votes shall be continued without adjournment until all have been counted. [1889–90 p 675 § 7; RRS § 7424. Formerly RCW 87.01.160.]

87.03.100 Post-organization district elections—Certification of returns—Preservation for recount. As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk[s], judge[s], and the inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector, in the presence of the judges and clerks, and endorsed "Election returns of [naming the precinct] precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted. [1981 c 345 § 2; 1981 c 208 § 2;

1889–90 p 675 § 8; RRS § 7425. Formerly RCW 87.01.170 and 87.01.210, part.]

87.03.105 Post-organization district elections—Canvass. No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public, and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof. [1889–90 p 676 § 9; RRS § 7426. Formerly RCW 87.01.180.]

87.03.110 Post-organization district elections—Statement of result of election—Certificate of election. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

- (1) The whole number of votes cast in the district;
- (2) The name of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct to each of such persons;
- (5) The number of votes given in each precinct for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out, and deliver to such person a certificate of election signed by him and authenticated by the seal of the district. [1913 c 165 § 4; 1895 c 165 § 4; 1889–90 p 676 § 10; RRS § 7427. Formerly RCW 87.01.190.]

Statement of result covering both absentee and regular ballots: RCW 87.03.034.

87.03.115 Organization of board—Meetings—Quorum—Certain powers and duties. The directors of the district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the directors. The directors serving districts of five thousand acres or more shall hold a regular monthly meeting at their office on the first Tuesday in every month, or on such other day in each month as the board shall direct in its bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Directors serving districts of less than five thousand acres shall hold at least quarterly meetings on a day designated by the board's bylaws, and may adjourn any meeting from time to time as may be required

for the proper transaction of business. Special meetings shall be called and conducted in the manner required by chapter 42.30 RCW. All meetings of the directors must be public. A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors. All records of the board shall be open to the inspection of any electors during business hours. The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, and to establish equitable bylaws, rules and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: *Provided*, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto. The bylaws, rules and regulations must be on file and open to inspection of any elector during regular business hours. All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within *this act, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: *Provided*, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership. The board of directors shall have authority to develop and to sell, lease, or rent the use of: (1) Water derived from the operation of the district water facilities to such municipal and quasi municipal entities, the state of Washington, and state entities and agencies, public and private corporations and individuals located within and outside the boundaries of the district and on such terms and conditions as the board of directors shall determine; and (2) power derived from hydroelectric facilities authorized by RCW 87.03.015(1) as now or hereafter amended, to such municipal or quasi municipal corporations and cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, and other irrigation districts and on such terms and conditions as the board of directors shall determine: *Provided*, No water shall be furnished for use outside of said district until all demands and requirements for water for use in said district are furnished and supplied by said district: *And provided further*, That as soon as any public lands situated within the limits of the district shall be acquired by any private

person, or held under any title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other land owners, upon payment by him of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1983 c 262 § 1; 1979 ex.s. c 185 § 3; 1921 c 129 § 5; 1919 c 180 § 4; 1915 c 179 § 4; 1913 c 165 § 5; 1889-90 p 677 § 11; RRS § 7428. Formerly RCW 87.01.200 and 87.32.010, part.]

***Reviser's note:** "This act" first appears in 1921 c 129 § 5.

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Director divisions: Chapter 87.04 RCW.

87.03.120 System of drainage, sanitary sewers, or sewage disposal or treatment plants—Question—Notice—Meeting—Resolution. Whenever, in the judgment of the district board, a system of drainage, sanitary sewers, or sewage disposal or treatment plants for any lands included in the operation of the district will be of special benefit to the lands of the district as a whole, it shall pass a resolution to that effect and call a further meeting of the board to determine the question. Notice of said meeting shall be given by the secretary for the same length of time and in the same manner as required by law for the meeting of the county board to hear the petition for the organization of the district. At the time and place mentioned in the notice the board shall meet, hear such evidence as shall be presented, and fully determine the matter by resolution which said resolution shall be final and conclusive upon all persons as to the benefit of said system of drainage, sanitary sewers, or sewage disposal or treatment plants to the lands in the district. [1965 c 141 § 3; 1923 c 138 § 5, part; RRS § 7428-1. Formerly RCW 87.08.130, part.]

Organization of district—Notice: RCW 87.03.020.

87.03.125 System of drainage, sanitary sewers, or sewage disposal or treatment plants—Powers upon passage of resolution. Upon the passing of said resolution, the district shall in all respects have the same power and authority as is now, or may hereafter be, conferred respecting irrigation and all powers in this act conferred upon irrigation districts with respect to irrigation shall be construed to include drainage systems, sanitary sewers, and sewage disposal or treatment plants in conjunction therewith as herein provided. [1965 c 141 § 4; 1923 c 138 § 5, part; RRS § 7428-2. Formerly RCW 87.08.130, part.]

87.03.130 District change of name. Any district heretofore or hereafter organized and existing, may change its name by filing with the board of county commissioners of the county in which was filed the original

petition for the organization of the district, a certified copy of a resolution of its board of directors adopted by the unanimous vote of all the members of said board at a regular meeting thereof providing for such change of name; and thereafter all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name, and a change of name heretofore made by any existing irrigation district in this state, substantially in the manner above provided is hereby ratified, confirmed and validated. [1965 c 141 § 5; 1923 c 138 § 5, part; RRS § 7428-3. Formerly RCW 87.08.140.]

87.03.135 Sale or lease of district property generally. Any irrigation district shall have power to sell or lease any real estate or personal property owned by such district, whenever the board of directors shall, by unanimous vote, determine that such property is not necessary or needed for the use of the district. No sale or lease of such property shall be made until notice thereof shall be given by publication at least twenty days before the date of said sale or lease of said property in some newspaper of general circulation in the county where the property or part thereof is located, if there be one, and if there be none, then in some newspaper of general circulation published in an adjoining county, said publication to be made at least once a week during three consecutive weeks before the day fixed for the making of such sale or lease, and shall contain notice of intention of the board of directors to make such sale or lease and state the time and place at which proposals for such sale or lease will be considered and at which the sale or lease will be made: *Provided*, That the provisions of this section relating to publication of notice shall not apply when the value of the property to be sold or leased is less than five hundred dollars. Any such property so sold or leased shall be sold or leased to the highest and best bidder. The provisions of this section shall not apply to the sale or lease of lands acquired by an irrigation district through its purchase of said lands for the nonpayment of its irrigation assessments. [1975 1st ex.s. c 163 § 1; 1967 ex.s. c 144 § 7; 1933 c 43 § 1; 1931 c 82 § 1; RRS § 7428-4. Formerly RCW 87.08.150.]

Severability—1967 ex.s. c 144: See note following RCW 36.98.030.

Official paper for publication: RCW 87.03.020.

Organization of board (holding of interest in public lands as evidence of title): RCW 87.03.115.

87.03.137 Purchase or condemnation for developing hydroelectric generation capabilities—Limitations. For the purpose of developing hydroelectric generation capabilities in connection with irrigation facilities, the board of directors of an irrigation district shall have the power, in accordance with procedures provided in this chapter, to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property located within or outside the boundaries of the

district necessary for the construction, use, supply, maintenance, repair, or improvement of hydroelectric facilities to the extent authorized by RCW 87.03.015(1), as now or hereafter amended.

Irrigation districts are prohibited from condemning: (1) Any hydroelectric power plants, hydroelectric power sites, power lines or other power facilities or any lands, water rights, or other property of municipal and quasi municipal corporations, cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission; and (2) water rights held by private individual landowners where such waters are being put to beneficial use. [1979 ex.s. c 185 § 4.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.03.138 Electrical utilities—Civil immunity of directors and employees for good faith mistakes and errors of judgment. Directors and employees of irrigation districts shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the irrigation district. [1983 1st ex.s. c 48 § 3.]

Severability—1983 1st ex.s. c 48: See note following RCW 35.21.415.

87.03.140 Board's powers and duties generally—Condemnation procedure. The board, and its agents and employees, shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation or drainage works, power plants, power sites or power lines and the line for any canal or canals, and the necessary branches of laterals for the same, on any lands which may be deemed best for such location. Said board shall also have the power to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and irrigation and drainage works, including canals and works constructed or being constructed by private owners, or any other person, lands for reservoirs for the storage of needful waters and all necessary appurtenances. The board may also construct the necessary dams, reservoirs and works for the collection of water for the said district, and may enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done in order to carry out the purposes of this act; and in carrying out the aforesaid purposes the bonds of the district may be used by the board, at not less than ninety percent of their par value in payment. The board may enter into any obligation or contract with the United States or with the state of Washington for the supervision of the construction, for the construction, reconstruction, betterment, extension, sale or purchase, or operation and maintenance of the

necessary works for the delivery and distribution of water therefrom under the provisions of the state reclamation act, or under the provisions of the federal reclamation act, and all amendments or extensions thereof, and the rules and regulations established thereunder, or it may contract with the United States for a water supply or for reclamation purposes in general under any act of congress which, for the purposes of this act, shall be deemed to include any act of congress for reclamation purposes heretofore or hereafter enacted providing for and permitting such contract, or for the collection of money due or to become due to the United States, or for the assumption of the control and management of the works; and in case contract has been or may hereafter be made with the United States, as herein provided, bonds of the district may be deposited with the United States as payment or as security for future payment at not less than ninety percent of their par value, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of directors to include as part of any levy or assessment provided in RCW 87.03.260 an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept on behalf of the district appointment of the district as fiscal agent of the United States or the state of Washington or other authorization of the district by the United States or the state of Washington to make collections of money for or on behalf of the United States or the state of Washington in connection with any federal or other reclamation project, whereupon the district, and the county treasurer for the district, shall be authorized to so act and to assume the duties and liability incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto.

The use of all water required for the irrigation of the lands within any district, together with rights-of-way for canals, laterals, ditches, sites for reservoirs, power plants, sites, and lines, and all other property required in fully carrying out the purposes of the organization of the district is hereby declared to be a public use; and in condemnation proceedings to acquire any property or property rights for the use of the district, the board of directors shall proceed in the name of the district, in the manner provided in this state in cases of appropriation of lands, real estate and other property by private corporations: *Provided*, That the irrigation district, at its option, pursuant to resolution to that end duly passed by its board of directors may unite in a single action proceedings for the acquisition and condemnation of different tracts of land needed by it for rights-of-way for canals, laterals, power plants, sites, and lines and other irrigation works which are held by separate owners. And the court may, on the motion of any party, consolidate into a

single action separate suits for the condemnation of rights-of-way for such irrigation works whenever from motives of economy or the expediting of business it appears desirable so to do: *Provided further*, That there shall be a separate finding of the court or jury as to each tract held in separate ownership.

In any condemnation proceeding brought under the provisions of this act to acquire canals, laterals and ditches and rights-of-way therefor, sites, reservoirs, power plants and pumping plants and sites therefor, power canals, transmission lines, electrical equipment and any other property, and if the owner or owners thereof or their predecessors shall have issued contracts or deeds agreeing to deliver to the holders of said contracts or deeds water for irrigation purposes, or authorizing the holders thereof to take or receive water for irrigation purposes from any portion of said property or works, and if the delivery of said water or the right to take or receive the same shall in any manner constitute a charge upon, or a right in the property and works sought to be acquired, or any portion thereof, the district shall be authorized to institute and maintain said condemnation proceedings for the purpose of acquiring said property and works, and the interest of the owners therein subject to the rights of the holders of such contracts or deeds, and the court or jury making the award shall determine and award to such owner or owners the value of the interest to be so appropriated in said condemnation proceedings. [1921 c 129 § 6; 1919 c 180 § 5; 1915 c 179 § 5; 1913 c 165 § 6; 1913 c 13 § 1; 1889-90 p 678 § 12; RRS § 7429. Formerly RCW 87.01.210, part and 87.08.080.]

Bonds of director, secretary or county treasurer when fiscal agent of United States: RCW 87.03.082.

Cancellation of assessments due United States—Procedure: RCW 87.03.280.

Certain powers of district enumerated: RCW 87.03.015.

Certain purposes for which district may be formed: RCW 87.03.010.

Condemnation—Title acquired by district (may be conveyed to United States or state): RCW 87.03.150.

Contracts with state or United States for local improvement work: RCW 87.03.520.

Districts right to cross other property: RCW 87.03.455.

Eminent domain by corporations: Chapter 8.20 RCW.

Federal reclamation laws: 43 USC §§ 371-498.

Indemnity to state on land settlement contracts: Chapter 87.48 RCW.

Reclamation Service may make findings: RCW 87.03.185.

State Reclamation Act: Chapter 89.16 RCW.

87.03.145 Condemnation—Finding of benefits and damages—Judgment—Costs. The jury, or the court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: *Provided*, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it shall appear by the verdict or findings, that the gross damages exceed said gross benefits, judgment shall be

entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over said benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the irrigation district. If it shall appear by the verdict that the gross benefits equal or exceed the gross damages, judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the irrigation district. The verdict and findings of the court or jury as to damages and benefits shall be binding upon the board of directors of the irrigation district in their levy of assessments to pay the cost of the irrigation system or improvements on behalf of which the condemnation was had: *Provided*, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded. [1923 c 138 § 6; 1919 c 180 § 6; RRS § 7429-1. Formerly RCW 87.08.090.]

87.03.150 Condemnation—Title acquired by district. The title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this chapter; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided: *Provided, however*, That any property so acquired by the district may be conveyed to the United States, or the state of Washington, insofar as the same may be for the benefit of the district under any contract that may be entered into with the United States, or the state of Washington, pursuant to this act.

The title acquired by an irrigation district under the provisions of this act shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. [1921 c 129 § 7; 1917 c 162 § 3; 1915 c 179 § 6; 1889-90 p 679 § 13; RRS § 7430. Formerly RCW 87.08.170.]

Board's powers and duties (contracts with state or United States):
RCW 87.03.140.

87.03.155 Conveyances—Actions by and against district. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at

law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof; and in all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district. [1889-90 p 679 § 14; RRS § 7431. Formerly RCW 87.01.230.]

87.03.158 Officers, employees, agents—Legal representation—Costs of defense. The board of directors of an irrigation district may authorize an attorney of its choosing to defend an officer, employee, or agent of the district, present or former, who requests representation as a result of an action, claim, or proceeding instituted against him or her. The costs of defense, including attorney's fees and any obligation for payment arising from the action, may be paid from district funds. Costs of defense, and judgment or settlement not in the person's favor, shall not be paid by the district if the court finds the person was not acting in good faith or within the scope of the person's employment or duties for the district. [1986 c 8 § 1.]

87.03.160 Group insurance—Purchase. The board of directors of irrigation districts shall have the authority and power to contract for and to pay the premium upon group life, health and accident insurance upon its employees; and to make all such insurance available to its directors, subject to payment by the directors of all costs of insurance for directors. [1975 c 14 § 1; 1951 c 159 § 1. Formerly RCW 87.01.225.]

87.03.162 Liability insurance for officials and employees. The board of directors of each irrigation district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 8.]

87.03.164 Liability insurance for officers and employees authorized. See RCW 36.16.138.

87.03.165 Proposed works—Surveys, maps and plans to be prepared. For the purpose of construction, reconstruction, betterment, extension or acquisition of the necessary property and rights therefor, and otherwise carrying out the provisions of law relating to irrigation districts, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the board deems it necessary or expedient to raise additional money for said purpose, cause the necessary surveys, examinations, maps and plans to be made and shall demonstrate the practicability of the general plan of the district's proposed works and furnish the proper basis for an estimate of the cost of carrying out the same. [1923 c 138 § 7,

part; RRS § 7431 1/2. Formerly RCW 87.12.010, part and 87.16.010.]

Map of district: RCW 87.03.775.

87.03.170 Proposed works—Certification filed with director of conservation. Such examinations, surveys, maps, plans and specifications with estimates of cost as are deemed necessary for an understanding of the proposed plan of development shall be certified by the district board and its engineer and filed with the state director of the department of conservation and development at Olympia, Washington. [1923 c 138 § 7, part; RRS § 7431 1/2-1. Formerly RCW 87.12.020, part.]

87.03.175 Proposed works—Director's findings to district board. Said director shall forthwith consider said certified report and if he deem it advisable make, through the appropriate divisions of his department, additional studies of the project at the expense of the district, and as soon as practicable thereafter, but in any event within ninety days from the receipt of said certified report, make his findings and submit the same to the district board. [1923 c 138 § 7, part; RRS § 7431 1/2-2. Formerly RCW 87.12.020, part.]

87.03.180 Proposed works—Substance of director's findings. In his findings said state director shall give generally his conclusions regarding the supply of water available for the project, the nature of the soil proposed to be irrigated and its susceptibility to irrigation, the duty of water for irrigation and the probable need of drainage, the probable cost of works, water rights and other property necessary for the project, the conditions of land settlement therein, and the proper amount and dates of maturity of the bonds proposed to be issued, and such other matters as he deems pertinent to the success of the project, provided that said findings and conclusions shall be advisory only and shall not be binding upon the directors of the irrigation district. [1923 c 138 § 7, part; RRS § 7431 1/2-3. Formerly RCW 87.12.030.]

87.03.185 Proposed works—Reclamation Service may make findings. In the case of an irrigation district under contract or in cooperation with the United States under the provisions of the United States Reclamation Act, the investigation and findings above required to be made by the state director of the department of conservation and development may be made by the United States Reclamation Service with the same authority and under like conditions, if it so elects. [1923 c 138 § 7, part; RRS § 7431 1/2-4. Formerly RCW 87.12.040.]

Board's powers and duties (contracts with state or United States): RCW 87.03.140.

87.03.190 Proposed works—Plan of development—Special election. Upon receipt of said findings the district board shall thereupon finally determine the plan of development and estimate and determine the amount of money to be raised and shall immediately thereafter call a special election as provided by law.

[1923 c 138 § 7, part; RRS § 7431 1/2-5. Formerly RCW 87.12.050.]

Elections are governed by irrigation district laws: RCW 87.03.030.

Post-organization district elections: RCW 87.03.085 through 87.03.110.

87.03.195 Proposed works—Certain irrigation districts excepted. As to *existing irrigation districts the provisions of RCW 87.03.165 through 87.03.190 relating to the filing of examinations, surveys, maps, plans and specifications of the plan of development with the director of the department of conservation and development and to an examination and the filing of findings and conclusions by that department, shall not apply. [1923 c 138 § 8; RRS § 7431 1/2-6. Formerly RCW 87.12.010, part.]

**Reviser's note: "existing irrigation districts" refers to those in existence on the effective date of 1923 c 138 which was March 17, 1923.*

87.03.200 Bonds—Election for—Form and contents—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty. (1) At the election provided for in RCW 87.03.190, there shall be submitted to the electors of said district possessing the qualifications prescribed by law the question of whether or not the bonds of said district in the amount and of the maturities determined by the board of directors shall be issued. Bonds issued under the provisions of this act shall be serial bonds payable in legal currency of the United States in such series and amounts as shall be determined and declared by the board of directors in the resolution calling the election: *Provided*, That the first series shall mature not later than ten years and the last series not later than forty years from the date thereof: *Provided further*, That bonds, authorized by a special election held in the district under the provisions of a former statute, which has subsequent to said authorization been amended, but not issued prior to the amendment of said former statute, may be issued in the form provided in said former statute, and any such bonds heretofore or hereafter so issued and sold are hereby confirmed and validated.

Notice of such bond election must be given by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least two weeks (three times). Such notices must specify the time of holding the election, and the amount and maturities of bonds proposed to be issued; and said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of law governing the election of the district officers: *Provided*, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds Yes" and "Bonds No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds Yes," the board of directors shall thereupon have authority to cause bonds in said amount and maturities to be issued. If the majority of the votes cast at any bond election are

"Bonds No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in RCW 87.03-.140 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No," or words equivalent thereto. And whenever thereafter said board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for said amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to said electors, it shall so declare, by resolution recorded in its minutes, and may thereupon submit such question to said electors in the same manner and with like effect as at such previous election.

(2) All bonds issued under this act shall bear interest at such rate or rates as the board of directors may determine, payable semiannually on the first day of January and of July of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or if the board of directors shall so determine at the fiscal agency of the state of Washington in New York City, said place of payment to be designated in the bond. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. Said bonds shall be negotiable in form, signed by the president and secretary, and the seal of the district shall be affixed thereto. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: *Provided*, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his manual signature certified by him under oath, whereupon that officer's facsimile signature has the same legal effect as his manual signature: *Provided, further*, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: *And provided further*, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed.

Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or any coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, shall be guilty of felony.

(3) Whenever the electors shall vote to authorize the issuance of bonds of the district such authorization shall nullify and cancel all unsold bonds previously authorized, and if the question is submitted to and carried by the electors at the bond election, any bond issue may be exchanged in whole or in part, at par, for any or all of a valid outstanding bond issue of the district when mutually agreeable to the owner or owners thereof and the district, and the amount of said last bond issue in excess, if any, of that required for exchange purposes, may be sold as in the case of an original issue. The bonds of any issue authorized to be exchanged in whole or in part for outstanding bonds shall state on their face the amount of such issue so exchanged, and shall contain a certificate of the treasurer of the district as to the amount of the bonds exchanged, and that said outstanding bonds have been surrendered and canceled: *Provided further*, That where bonds have been authorized and unsold, the board of directors may submit to the qualified voters of the district the question of canceling said previous authorization, which question shall be submitted upon the same notice and under the same regulations as govern the submission of the original question of authorizing a bond issue. At such election the ballots shall contain the words "Cancellation Yes," and "Cancellation No," or words equivalent thereto. If at such election a majority of the votes shall be "Cancellation Yes," the said issue shall be thereby canceled and no bonds may be issued thereunder. If the majority of said ballots shall be "Cancellation No," said original authorization shall continue in force with like effect as though said cancellation election had not been held: *Provided*, That bonds deposited with the United States in payment or in pledge may call for the payment of such interest at such rate or rates, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior.

(4) Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. Said bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. In case the money received by the sale of all bonds issued be insufficient for the completion

of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of said plans by levy of assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued and sold bonds under the law then in force, to issue in place thereof an amount of bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the owners of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: *Provided*, That the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district, in the same manner as required for the issue of original bonds, and the said board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of said board. Bonds issued under the provisions of this section may, when so authorized by the electors, include a sum sufficient to pay the interest thereon for a period not exceeding the first four years. Whenever an issue of bonds shall have been authorized pursuant to law, and any of the earlier series shall have been sold, and the later series, or a portion thereof, remain unsold, the directors may sell such later series pursuant to law, or such portion thereof as shall be necessary to pay the earlier series, or said directors may exchange said later series for the earlier series at not less than the par value thereof, said sale or exchange to be made not more than six months before the maturity of said earlier series and upon said exchange being made the maturing bonds shall be disposed of as hereinbefore provided in the case of bonds authorized to be exchanged in whole or in part for outstanding bonds.

(5) Notwithstanding subsections (1) through (4) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 213; 1977 ex.s. c 119 § 1; 1970 ex.s. c 56 § 95; 1969 ex.s. c 232 § 46; 1963 c 68 § 2; 1923 c 138 § 9; 1921 c 129 § 8; 1917 c 162 § 3A; 1915 c 179 § 7; 1895 c 165 § 5; 1889-90 p 679 § 15; RRS § 7432. Formerly RCW 87.16.020 through 87.16.070.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

87.03.205 Sections exclusive of other bonding methods—Validation. The procedure outlined in RCW 87.03.165 through 87.03.190, 87.03.200, and in 87.03.210, for the authorization, issuance and disposal of bonds as heretofore constituted and shall hereafter constitute a method independent and exclusive of that provided by

any other statute or statutes, for the authorization, issuance and disposal of bonds of the district for any and all of the objects and purposes in said sections provided, and any or all proceedings heretofore had, official acts heretofore performed or any bonds heretofore authorized or issued or disposed of in substantial accordance with the provisions of said sections are hereby validated and confirmed. [1933 ex.s. c 11 § 5; RRS § 7432 1/2. Formerly RCW 87.16.130.]

87.03.210 Sale or pledge of bonds. (1) The board may sell the bonds of the district or pledge the same to the United States from time to time in such quantities as may be necessary and most advantageous to raise money for the construction, reconstruction, betterment or extension of such canals and works, the acquisition of said property and property rights, the payment of outstanding district warrants when consented to in writing by the director of conservation and development, and to such extent as shall be authorized at said election, the assumption of indebtedness to the United States for the district lands, and otherwise to fully carry out the objects and purposes of the district organization, and may sell such bonds, or any of them, at private sale whenever the board deems it for the best interest of the district so to do: *Provided*, That no election to authorize bonds to refund outstanding warrants shall be held and canvassed after the expiration of the year 1934. The board of directors shall also have power to sell said bonds, or any portion thereof, at private sale, and accept in payment therefor, property or property rights, labor and material necessary for the construction of its proposed canals or irrigation works, power plants, power sites and lines in connection therewith, whenever the board deems it for the best interests of the district so to do. If the board shall determine to sell the bonds of the district, or any portion thereof, at public sale, the secretary shall publish a notice of such sale for at least three weeks in such newspaper or newspapers as the board may order. The notice shall state that sealed proposals will be received by the board, at its office, for the purchase of the bonds to be sold, until the day and hour named in the notice. At the time named in the notice, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids: *Provided*, That such bonds shall not be sold for less than ninety percent of their face value: *And provided, further*, That the proceeds of all bonds sold for cash must be paid by the purchaser to the county treasurer of the county in which the office of the board is located, and credited to the bond fund.

(2) Notwithstanding subsection (1) of this section, such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 214; 1933 c 43 § 2; 1921 c 129 § 9; 1915 c 179 § 8; 1913 c 165 § 7; 1895 c 165 § 6; 1889-90 p 681 § 16; RRS § 7433. Formerly RCW 87.16.080.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.03.215 Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section. Said bonds and interest thereon and all payments due or to become due to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments until fully paid as hereinafter provided. And in addition to this provision and the other provisions herein made for the payment of said bonds and interest thereon as the same may become due, said bonds, or the contract with the United States or the state of Washington accompanying which bonds have not been deposited with the United States or the state of Washington, shall become a lien upon all the water rights and other property acquired by any irrigation district formed under the provisions of this chapter, and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery and other works and improvements acquired, owned or constructed by said irrigation district, and if default shall be made in the payment of the principal of said bonds or interest thereon, or any payment required by the contract with the United States, or the state of Washington, according to the terms thereof, the owner of said bonds, or any part thereof or the United States or the state of Washington as the case may be, shall have the right to enter upon and take possession of all the water rights, canals, ditches, flumes, feeders, storage reservoirs, machinery, property and improvements of said irrigation district, and to hold and control the same, and enjoy the rents, issues and profits thereof, until the lien hereby created can be enforced in a civil action in the same manner and under the same proceedings as given in the foreclosure of a mortgage on real estate. This section shall apply to all bonds heretofore issued or any contract heretofore made with the United States, or which may hereafter be issued or made by any district: *Provided*, That when any such contract made after December 1, 1981, between any district and the United States or the state of Washington covers only the real property in a portion or portions of the district, all payments due or to become due to the United States or the state of Washington shall be paid by revenue derived from an annual assessment upon the real property only in that portion or portions of the district covered by the contract and the real property shall be and remain liable to be assessed for such payments until fully paid and any assessment lien which attaches thereto shall be the exclusive lien notwithstanding other liens provided for in this section. In the event of a contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington as provided in RCW 87.03.140 and the contract covers real property in only a portion or portions of the district, the question of whether the district

should enter the contract shall be submitted only to those qualified electors who hold title or evidence of title to real property within that portion or portions of the district and in the same manner as provided in RCW 87.03.200. [1983 c 167 § 215; 1981 c 209 § 16; 1921 c 129 § 10; 1915 c 179 § 9; 1913 c 165 § 8; 1895 c 165 § 7; 1889–90 p 681 § 17; RRS § 7434. Formerly RCW 87.16.090.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Effective date—1981 c 209: "This act shall take effect December 1, 1981, and shall apply to assessments made in 1981 and thereafter." [1981 c 209 § 18.] This applies to RCW 87.03.215, 87.03.270, 87.03-310, 87.03.315, 87.03.320, 87.03.325, 87.03.330, 87.03.335, 87.03.350, 87.03.355, 87.03.360, 87.03.370, 87.03.375, 87.03.380, 87.03.385 and 87.03.390 and the repeal of RCW 87.03.365.

87.03.220 Refunding bonds, 1923 act. See chapter 87.19 RCW.

87.03.225 Refunding bonds, 1929 act. See chapter 87.22 RCW.

87.03.230 Revenue bonds for water, power, drains, sewers, sewage disposal, etc. See chapter 87.28 RCW.

87.03.235 Rights of federal agencies as to certain district bonds. If the United States under any act of congress or under rules and regulations adopted by the secretary of the interior, shall be willing to guarantee the interest upon bonds of any irrigation district, or shall be willing to receive bonds of any such district in payment of, or as security for payment upon, any contract of the United States, then the United States shall have all the remedies given by law to a bondholder, and, in cases of payment under any guaranty, the United States shall be subrogated to all the rights and remedies of the bondholder to the extent of any such payment; and the United States, or its proper department officers, may make such rules and regulations as may be necessary for the purpose of insuring the carrying out of any plan or project which may have been approved by them as the basis of any guaranty. [1915 c 99 § 6; RRS § 7435. Formerly RCW 87.16.100.]

87.03.240 Assessments, how and when made—Assessment roll. Assessments made in order to carry out the purpose of this act shall be made in proportion to the benefits accruing to the lands assessed and equitable credit shall be given to the lands having a partial or full water right: *Provided*, That nothing herein shall be construed to affect or impair the obligation of any existing contract providing for a water supply to lands so assessed, unless the right under such contract shall first have been acquired by said district, and in acquiring such rights, the district may exercise the right of eminent domain.

The secretary must between the first Monday in March and the first Tuesday in November each year prepare an assessment roll with appropriate headings in which must be listed all the lands within the district. In

such book must be specified, in separate columns, under the appropriate headings:

First, the name of the person to whom the property is assessed. If the name is not known to the secretary, the property shall be assessed to "unknown owners".

Second, land by township, range and section or fractional section, and when such land is not a legal subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town.

Assessors' plat tax numbers used by county assessors for general state and county taxes in the county where such land is situate may be used for such identification in such assessment roll.

Third, in further columns with appropriate headings shall be specified the ratio of benefits, or, when deemed by the secretary more practicable, the per acre value, or the amount of benefits, for general and special district and local improvement district purposes, and the total amount assessed against each tract of land.

Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for such current year and any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency.

Where the district embraces lands lying in more than one county the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1933 c 43 § 3; 1921 c 129 § 11; 1919 c 180 § 7; 1917 c 162 § 4; 1915 c 179 § 10; 1913 c 165 § 9; 1895 c 165 § 8; 1889-90 p 681 § 18; RRS § 7436. Formerly RCW 87.32.010, part and 87.32.020.]

Assessments

districts under contract with United States: Chapter 87.68 RCW. when delinquent—Notice—Collection: RCW 87.03.270.

Certain excess lands, assessments against (director districts): RCW 87.04.100.

Director districts—Limit of levy until water is received (federal contracts): RCW 87.04.090.

District elections (assessment roll): RCW 87.03.040.

Eminent domain: RCW 87.03.140 through 87.03.150.

Evidence of assessment, what is: RCW 87.03.420.

87.03.242 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

87.03.245 Deputy secretaries for assessment. The board of directors must allow the secretary as many deputies, to be appointed by them, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix the compensation of such deputies for the time actually engaged. [1919 c 180 § 8; 1895 c 165 § 9; 1889-90 p 682 § 19; RRS § 7437. Formerly RCW 87.08.180.]

87.03.250 Assessment roll to be filed—Notice of equalization. On or before the first Tuesday in September in each year to and including the year 1923, and on or before the first Tuesday in November beginning with the year 1924 and each year thereafter, the secretary must complete his assessment roll and deliver it to the board, who must immediately give a notice thereof, and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment roll must remain in the office of the secretary for the inspection of all persons interested. [1921 c 129 § 12; 1919 c 180 § 9; 1895 c 165 § 10; 1889-90 p 682 § 20; RRS § 7438. Formerly RCW 87.32.030.]

87.03.255 Equalization of assessments. Upon the day specified in the notice required by RCW 87.03.250 for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may change the same as may be just. The secretary of the board shall be present during its session, and note all changes made at said hearing; and on or before the 30th day of October in each year to and including the year 1923, and on or before the 15th day of January beginning with the [year] 1925 and each year thereafter he shall have the assessment roll completed as finally equalized by the board. [1921 c 129 § 13; 1919 c 180 § 10; 1915 c 179 § 11; 1889-90 p 682 § 21; RRS § 7439. Formerly RCW 87.32.040.]

87.03.260 Levies, amount—Special funds—Failure to make levy, procedure. The board of directors shall in each year before said roll is delivered by the secretary to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds, and all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington as in this act provided. Beginning in the year preceding the maturity of the first series of the bonds of any issue, the board must from year to year increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. Similar levy and assessment shall be made for the expense fund which shall include operation and maintenance costs for the ensuing year. The board shall also at the time of making the annual levy, estimate the amount of all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount sufficient to cover

any deficit that may have resulted from delinquent assessments for any preceding year. The board shall also, at the time of making the annual levy, estimate the amount of the assessments to be made against lands owned by the district, including local improvement assessments, and shall levy a sufficient amount to pay said assessments. All lands owned by the district shall be exempt from general state and county taxes: *Provided, however,* That in the event any lands, and any improvements located thereon, acquired by the district by reason of the foreclosure of irrigation district assessments, shall be by said district resold on contract, then and in that event, said land, and any such improvements, shall be by the county assessor immediately placed upon the tax rolls for taxation as real property and shall become subject to general property taxes from and after the date of said contract, and the secretary of the said irrigation district shall be required to immediately report such sale within ten days from the date of said contract to the county assessor who shall cause the property to be entered on the tax rolls as of the first day of January following.

The board may also at the time of making the said annual levy, levy an amount not to exceed twenty-five percent of the whole levy for the said year for the purpose of creating a surplus fund. This fund may be used for any of the district purposes authorized by law. The assessments, when collected by the county treasurer, shall constitute a special fund, or funds, as the case may be, to be called respectively, the "Bond Fund of ----- Irrigation District," the "Contract Fund of ----- Irrigation District," the "Expense Fund of ----- Irrigation District," the "Warrant Fund of ----- Irrigation District," the "Surplus Fund of ----- Irrigation District".

If the annual assessment roll of any district has not been delivered to the county treasurer on or before the 15th day of January in the year 1927, and in each year thereafter, he shall notify the secretary of the district by registered mail that said assessment roll must be delivered to the office of the county treasurer forthwith. If said assessment roll is not delivered within ten days from the date of mailing of said notice to the secretary of the district, or if said roll when delivered is not equalized and the required assessments levied as required by law, or if for any reason the required assessment or levy has not been made, the county treasurer shall immediately notify the legislative authority of the county in which the office of the board of directors is situated, and said county legislative authority shall cause an assessment roll for the said district to be prepared and shall equalize the same if necessary and make the levy required by this chapter in the same manner and with like effect as if the same had been equalized and made by the said board of directors, and all expenses incident thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his official bond, as in other cases.

At the time of making the annual levy in the year preceding the final maturity of any issue of district bonds, the board of directors shall levy a sufficient amount to pay and redeem all bonds of said issue then remaining unpaid. All surplus remaining in any bond fund after all bonds are paid in full must be transferred to the surplus fund of the district.

Any surplus moneys in the surplus fund or any surplus moneys in the bond fund when so requested by the board of directors shall be invested by the treasurer of said county under the direction of said board of directors in United States bonds or bonds of the state of Washington, or any bonds pronounced by the treasurer of the state of Washington as valid security for the deposit of public funds, and in addition thereto any bonds or warrants of said district, all of which shall be kept in the surplus fund until needed by the district for the purposes authorized by law. [1983 c 167 § 216; 1967 c 169 § 1; 1941 c 157 § 1; 1929 c 185 § 1; 1927 c 243 § 1; 1923 c 138 § 10; 1921 c 129 § 14; 1919 c 180 § 11; 1915 c 179 § 12; 1913 c 165 § 10; 1895 c 165 § 11; 1889-90 p 683 § 22; Rem. Supp. 1941 § 7440. Formerly RCW 87-.32.060, 87.32.070, 87.32.080 and 87.32.090.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Board's powers and duties generally—Condemnation procedure: RCW 87.03.140.

Bonds—Election for, etc.: RCW 87.03.200.

Certain excess lands, assessment against: RCW 87.04.100.

Irrigation district L.I.D. guarantee fund: RCW 87.03.510.

Limit of levy until water is received (federal contracts—director districts): RCW 87.04.090.

Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section: RCW 87.03.215.

Power as to incurring indebtedness: RCW 87.03.475.

Rights of federal agencies as to certain district bonds: RCW 87.03.235.

Sale or lease of district property: RCW 87.03.135.

Sale or pledge of bonds: RCW 87.03.210.

87.03.265 Lien of assessment. The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the fifteenth day of February of the year in which the assessment is payable, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, or the state of Washington, accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract. [1939 c 171 § 2; 1921 c 129 § 15; 1915 c 179 § 13; 1913 c 165 § 11;

1889-90 p 684 § 23; RRS § 7441. Formerly RCW 87.32.100.]

Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of: RCW 87.03.445.

87.03.270 Assessments, when delinquent—Assessment book, purpose—Statement of assessments due—Collection—Additional fee for delinquency. The assessment roll, before its equalization and adoption, shall be checked and compared as to descriptions and ownerships, with the county treasurer's land rolls. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall become due and payable on the fifteenth day of February following.

All assessments on said roll shall become delinquent on the first day of May following the filing of the roll unless the assessments are paid on or before the thirtieth day of April of said year: *Provided*, That if an assessment is ten dollars or more for said year and if one-half of the assessment is paid on or before the thirtieth day of April, the remainder shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date. All delinquent assessments shall bear interest at the rate of twelve percent per annum computed on a monthly basis from the date of delinquency until paid.

Upon receiving the assessment roll the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

On or before April 1st of each year, the treasurer of the district shall send a statement of assessments due. County treasurers who collect irrigation district assessments may send the statement of irrigation district assessments together with the statement of general taxes.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the treasurer of the district to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request. All statements of irrigation district assessments covering any land in the district shall show the amount of the irrigation district assessment, the dates on which the assessment is due, the

place of payment, and, if the property was sold for delinquent assessments in a prior year, the amount of the delinquent assessment and the notation "certificate issued": *Provided*, That the failure of the treasurer to render any statement herein required of him shall not render invalid any assessments made by any irrigation district.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him for the irrigation district during the preceding month.

When the treasurer collects a delinquent assessment, in addition to any other amounts due by reason of the delinquency, he shall collect an additional sum of ten dollars, which shall be deposited to the treasurer's operation and maintenance fund. [1982 c 102 § 1; 1981 c 209 § 1; 1967 c 169 § 2; 1939 c 171 § 3; 1933 c 43 § 4; 1931 c 60 § 2; 1929 c 181 § 1; 1921 c 129 § 16; 1919 c 180 § 12; 1917 c 162 § 5; 1915 c 179 § 14; 1913 c 165 § 12; 1913 c 13 § 2; 1895 c 165 § 12; 1889-90 p 684 § 24; RRS § 7442. Formerly RCW 87.32.050.]

Effective date—1982 c 102: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 15, 1982." [1982 c 102 § 3.]

Effective date—1981 c 209: See note following RCW 87.03.215.

Assessments

districts under contract with United States: Chapter 87.68 RCW, how and when made—Assessment roll: RCW 87.03.240.

Equalization of assessments: RCW 87.03.255.

Evidence of assessment, what is: RCW 87.03.420.

87.03.272 Secretary may act as collection agent of nondelinquent assessments—Official bond—Collection procedure—Delinquency list. Notwithstanding the provisions of RCW 87.03.260, 87.03.270, 87.03.440 and 87.03.445 the board of directors of any district acting as fiscal agent for the United States or the state of Washington for the collection of any irrigation charges may authorize the secretary of the district to act as the exclusive collection agent for the collection of all nondelinquent irrigation assessments of the district pursuant to such rules and regulations as the board of directors may adopt.

When the secretary acts as collection agent, his official bond shall be of a sufficient amount as determined by the board of directors of the district to cover any amounts he may be handling while acting as collection agent, in addition to any other amount required by reason of his other duties.

The assessment roll of such district shall be delivered to the county treasurer in accordance with the provisions of RCW 87.03.260 and 87.03.270 and the assessment roll shall be checked and verified by the county treasurer as provided in RCW 87.03.270.

After the assessment roll has been checked and verified by the county treasurer, the secretary of the district shall proceed to publish the notice as required under RCW 87.03.270; except that the notice shall provide

that until the assessments and tolls become delinquent on November 1st they shall be due and payable in the office of the secretary of the district.

When the secretary of such district receives payments, he shall issue a receipt for such payments and shall be accountable on his official bond for the safekeeping of such funds and shall remit the same, along with an itemized statement of receipts, at least once each month to the county treasurer wherein the land is located on which the payment was made.

When the county treasurer receives the monthly statement of receipts from the secretary, he shall enter the payments shown thereon on the assessment roll maintained in his office.

On the fifteenth day of November of each year it shall be the duty of the secretary to transmit to the county treasurer the delinquency list which shall include the names, amounts and such other information as the county treasurer shall require, and thereafter the secretary shall not accept any payment on the delinquent portion of any account. Upon receipt of the list of delinquencies, the county treasurer shall proceed under the provisions of this chapter as though he were the collection agent for such district to the extent of such delinquent accounts. [1982 c 102 § 2; 1967 c 169 § 3.]

Effective date—1982 c 102: See note following RCW 87.03.270.

87.03.275 Medium of payment of assessments. All assessments and tolls authorized under this act shall be paid in legal tender of the United States except that assessments and tolls levied for the expense fund of the district may be paid with district warrants issued in payment for labor hired by the district, at par without interest drawn on the expense fund in the year in which the assessment to be paid thereby is payable, or in the preceding year, and such warrants shall be so accepted notwithstanding their serial numbers or their order of issue as to then outstanding warrants: *Provided, however,* That in no case shall the county treasurer be authorized to pay any cash difference to the holders of any warrant so offered in payment of such assessments and in the event such warrant shall exceed the amount so applied on assessments, the county treasurer shall issue to the holder thereof a certificate directing the county auditor to issue to such holder a district warrant on the same fund, bearing date on which such lieu warrant is issued, for the difference between the face or par amount of the warrant received by the treasurer, without interest, and the amount credited on said assessment. Upon the surrender of such lieu warrant certificate the county auditor shall be authorized to issue and deliver such lieu warrant. [1933 c 43 § 5; 1923 c 138 § 11; RRS § 7442-1. Formerly RCW 87.32.120.]

87.03.280 Cancellation of assessments due United States—Procedure. Where any district under contract with the United States has levied any assessment for the collection of money payable to the United States under such contract, and the secretary of the interior has by agreement with the board of directors of said district, authorized the extension or cancellation of any payments

due to the United States by the cancellation of assessments already levied therefor but remaining unpaid, the board of directors of such district shall certify to the county treasurer of the county in which the land is located, a statement of the year and amounts assessed against each tract for which such cancellation has been authorized, and the county treasurer, upon receipt of such certificate, shall, in all cases where the assessment remains unpaid and the lands have not been sold, endorse upon the district's assessment roll, "Corrected under Certificate of Board of Directors" and shall deduct and cancel from the assessment against each such tract the amount of such assessment so authorized to be canceled; and in all cases where such cancellations have been certified to the county treasurer after such lands assessed have been sold and before the period of redemption shall have expired, the county treasurer shall, in those cases where the tract assessed has been sold to the district, and the district is the owner of the certificate of sale, require the district to surrender its certificate of sale and shall thereupon deduct the amount of such cancellation plus the penalties thereon upon the original assessment roll with an endorsement, "Corrected under Certificate of Board of Directors" and he shall thereupon issue to the district in lieu of the certificate surrendered, a substitute certificate of sale for the corrected amount of such assessment, if any, remaining uncanceled, and shall file a copy thereof in the office of the county auditor as in the case of the original certificate surrendered, and such substitute certificate shall entitle the holder thereof to all rights possessed under the original certificate so corrected as to amount: *Provided, however,* That such cancellation shall have the same effect as though the lands had originally not been assessed for the amounts so deducted and shall not operate to bar the district of the right in making subsequent annual assessments to levy and collect against such tracts the amount of any money due the United States, including the amount of any assessments so canceled. [1925 c 3 § 1; RRS § 7442-2. Formerly RCW 87.32.130.]

Board's powers and duties (contracts with state and United States): RCW 87.03.140.

Redemption generally: RCW 87.03.355.

87.03.285 Segregation of assessment—Authorization. Whenever in the discretion of the board of directors of any irrigation district of the state as determined by resolution, after an assessment roll has been filed with the county treasurer of the appropriate county in accordance with the laws of the state pertaining thereto, the irrigation district assessments against any tract or parcel of land may be segregated to apply against, and the lien may be divided among, the various parcels of said tract as the same may be hereafter divided, all in accordance herewith. [1951 c 205 § 1. Formerly RCW 87.32.102.]

87.03.290 Segregation of assessment—Hearing. When the irrigation district directors shall deem it advisable to make such segregation of assessments they

shall by resolution fix the time and place for the hearing of the question concerning the segregation of assessments, which hearing may be at the next regular meeting of the directors of said irrigation district at its principal office. [1951 c 205 § 2. Formerly RCW 87.32.103.]

87.03.295 Segregation of assessment—Notice of hearing. Not less than ten days prior to the time and date fixed for said hearing the directors of said irrigation district shall cause notice of the time and place of said hearing to be given by registered mail to every person, firm or corporation having any interest in said property as shown by the county assessor's records or by the record of the irrigation district within which said property is located and to the address shown by said records, authorizing and directing that they appear and be heard at said time and place. [1951 c 205 § 3. Formerly RCW 87.32.104.]

87.03.300 Segregation of assessment—Order. In the event said hearing shall result in a determination that in the discretion of the directors of said irrigation district it is advisable that said assessments be segregated and apportioned among the various parcels of said tracts against which the original total assessment was levied, then an order shall be entered on the records of the directors of said irrigation district determining said segregation, and a certified copy thereof shall be filed with the county treasurer of the county in which said assessment roll is filed. [1951 c 205 § 4. Formerly RCW 87.32.105.]

87.03.305 Segregation of assessment—Amendment of roll—Effect. Upon the filing of the certified copy of said order the county treasurer shall alter and amend the original assessment roll in accordance with said order and thereafter the assessments will be a lien only as shown by said order of segregation and the amended assessment roll as the same shall affect the property upon which said segregation was ordered. [1951 c 205 § 5. Formerly RCW 87.32.106.]

87.03.310 Delinquency list, notice—Posting—Publication—Mailing. On or before the thirty-first day of December of each year, the treasurer of each county shall post and publish the delinquency list, which shall contain the names of persons to whom the property is assessed and a description of the property delinquent and the amount of the assessment and costs due, opposite each name and description.

The treasurer shall append to and post with the list a notice, at least twenty days before the sale, that unless the assessments together with costs and accrued interest are paid, the property will be sold at public auction. One copy thereof shall be posted in the county courthouse, and the treasurer shall provide four copies to the irrigation district in which the property is located. The irrigation district shall post one copy in the irrigation district office and three copies in public places in the district.

The notice shall be published once a week for three successive weeks in a newspaper of general circulation in the county. Notices shall designate the time and place of sale. The time of sale shall be not less than twenty-one nor more than thirty-five days from the date of posting and from the date of the first publication of the notice thereof, and the place of the sale shall be at some point designated by the treasurer. At least ten days prior to the date of the public auction, the treasurer shall send by first class mail a notice to the taxpayer or owner of record of the land having a delinquent assessment. The notice shall contain a statement of the amount of the delinquent assessment plus interest as provided in RCW 87.03.270, as now or hereafter amended, accruing from the date of delinquency; a ten dollar delinquency charge owing on the land; the time, date, and place of the sale of properties having delinquent assessments; and a statement that failure to pay the assessment prior to the date of sale will result in a sale of the property. [1985 c 469 § 87; 1981 c 209 § 2; 1955 c 60 § 1; 1933 c 43 § 6; 1931 c 60 § 3; 1929 c 181 § 2; 1921 c 129 § 17; 1919 c 180 § 13; 1917 c 162 § 6; 1915 c 179 § 15; 1913 c 165 § 13; 1889–90 p 684 § 25; RRS § 7443. Formerly RCW 87.32.140.]

Effective date—1981 c 209: See note following RCW 87.03.215.
Official newspaper for publication: RCW 87.03.020.

87.03.315 Sale, when and how made—Postponement. The treasurer of the county in which the land is situated shall conduct the sale of all lands situated therein and must collect in addition to the assessment due as shown on the delinquent list the costs and expenses of sale and interest at the rate provided in RCW 87.03.270, as now or hereafter amended. On the day fixed for the sale, or some subsequent day to which he may have postponed it, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same, beginning at the head of the list, and continuing alphabetically, or in the numerical order of the parcels, lots or blocks, until completed. He may postpone the day of commencing the sale, or the sale from day to day, by giving oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day fixed. [1981 c 209 § 3; 1933 c 43 § 7; 1931 c 60 § 4; 1929 c 181 § 3; 1921 c 129 § 18; 1913 c 165 § 14; 1895 c 165 § 13; 1889–90 p 685 § 26; RRS § 7444. Formerly RCW 87.32.150.]

Effective date—1981 c 209: See note following RCW 87.03.215.

87.03.320 Sale—After rejection by district—How conducted. The treasurer shall offer the parcel to the district on the date of sale for the amount of the assessment, accrued interest, and costs. If the district rejects the offer, then the treasurer shall sell the property to the highest and best bidder for cash. If the property is sold for more than the amount of the assessment, interest, and costs, the excess shall, after the deed has been delivered, be refunded, on application therefor, to the record owner of the property as of the date of the sale. In the event no claim for said excess is received by the

treasurer within three years after the delivery of the deed, he shall, at the expiration of the three-year period, remit the excess to the district.

The purchaser, in addition to the purchase price, shall pay two dollars to the treasurer for a duplicate of the certificate of sale. The treasurer shall account to the district for the two dollars. If the purchaser does not pay the purchase price before ten o'clock a.m. the following day, the property shall be resold on the next day. If there is no purchaser for a tract when first offered for sale, it shall be offered again thereafter and if finally there is no purchaser it shall be struck off to the district as the purchaser for the amount of the assessment, interest, and costs, and the duplicate certificate shall be delivered to the secretary of the district, and filed by him in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the county treasurer shall make an entry, "sold to the district," and he will be credited with the amount thereof in settlement.

When land has been omitted from the general district sale, or when a sale is illegal by reason of a defective notice of sale or material errors in the description of the property and the deed has not been delivered, a reassessment shall not be required, but the treasurer shall sell the property at the next general annual sale, for all delinquent assessments. The purchaser at an illegal sale who has not accepted delivery of deed shall be entitled to a return of any moneys paid, upon return of the certificate of sale.

Sales of land hereunder shall not convey title to any easement thereon owned by any public service corporation, or by the district, or by any municipal or public corporation, or convey the title to any public service facilities constructed or maintained on the land under such easement, including also any private easement owned by third parties by which service is received from the district, or municipal or public service corporation. [1981 c 209 § 4; 1955 c 58 § 2. Prior: 1939 c 171 § 4, part; 1933 c 43 § 8, part; 1921 c 129 § 19, part; 1913 c 165 § 15, part; 1895 c 165 § 14, part; 1889-90 p 685 § 27, part; RRS § 7445, part. Formerly RCW 87.32.160.]

Effective date—1981 c 209: See note following RCW 87.03.215.

Remission of interest, etc.: "During the period ending May 31, 1934, the board of directors of any irrigation district may, in its discretion and without being required so to do, remit the interest, and/or penalties on any unpaid assessments payable and delinquent in the year 1933, or in any year prior thereto, and where a certificate of sale for the nonpayment of any assessment has issued to and is owned by the district, may remit such interest and/or penalties or any part thereof as are required to be paid to effect redemption: *Provided*, Such right to permit remitting interest and penalties for said years shall be limited to assessments paid and lands redeemed during the period ending May 31, 1934: *And provided*, Such payments and/or redemptions have been authorized by resolution or resolutions of the board of directors entered upon its minutes from time to time." [1933 ex.s. c 39 § 1; 1933 c 43 § 9; Rem. Supp. § 7445-1.]

Condemnation—*Title acquired by district:* RCW 87.03.150.

Mistake of ownership not to affect sale: RCW 87.03.425.

87.03.325 District as purchaser—Rights—Re-conveyance. A district may assign or transfer the certificate of sale upon the payment of the amount which

would be due if redemption were made. If no redemption is made of land for which a district holds a certificate of purchase, the district may receive the treasurer's deed therefor. The district may lease from year to year with the right to include an option to purchase, sell on contract on deferred payments, or sell for cash and convey the lands so acquired, by deed executed by the president and secretary of the board and acknowledged by the president. Authority to lease, option, sell, or convey shall be by resolution of the board entered on its minutes, fixing the price at which the option may be granted or sale may be made, which price shall be not less than the reasonable market value of the property.

The board may without consideration, dedicate, grant, or convey district land or easements therein for highway or public utility purposes conveniencing the inhabitants of the district when it deems such action will enhance the value of the remaining district land to an extent equal to or greater than the value of the interest or easement dedicated, granted or conveyed, and may upon resolution, without consideration, issue quitclaim deeds to clear title to land sold under foreclosure.

When land is deeded to the district and if title remains vested in the district and the board believes the sale resulted from unavoidable accident, inadvertence, or misfortune, and without intent on the part of the person entitled to make redemption to permit the assessment to become delinquent and the land to be sold, it shall reconvey to the person entitled to redemption within one year after deed is issued, upon the payment of the amount stated in the certificate of sale with interest thereon at the rate provided in RCW 87.03.270, as now or hereafter amended, from the date of sale, and two dollars for the deed, and all subsequent assessments and costs with interest. [1981 c 209 § 5; 1955 c 58 § 3. Prior: 1939 c 171 § 4, part; 1933 c 43 § 8, part; 1921 c 129 § 19, part; 1913 c 165 § 15, part; 1895 c 165 § 14, part; 1889-90 p 685 § 27, part; RRS § 7445, part. Formerly RCW 87.32.170.]

Effective date—1981 c 209: See note following RCW 87.03.215.

87.03.330 Certificate of sale. After receiving the amount of the assessments and costs, the treasurer shall make out in duplicate a certificate dated on the day of sale, stating the names of the persons assessed if known, a description of the land sold, the amount paid therefor, and that it was sold for assessments, giving the amount and the year of assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate shall be signed by the treasurer and one copy delivered to the purchaser, and the other filed in his office. In case of a sale to a person or a district of more than one tract of land, the several tracts may be included in one certificate. [1981 c 209 § 6; 1955 c 58 § 4. Prior: 1939 c 171 § 4, part; 1933 c 43 § 8, part; 1921 c 129 § 19, part; 1913 c 165 § 15, part; 1895 c 165 § 14, part; 1889-90 p 685 § 27, part; RRS § 7445, part. Formerly RCW 87.32.180.]

Effective date—1981 c 209: See note following RCW 87.03.215.

Mistake of ownership not to affect sale: RCW 87.03.425.

87.03.335 Record of sales. The county treasurer, before delivering any certificate must file the same and enter in the assessment book opposite the description of the land sold, the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the description on the margin of the assessment book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use.

On filing the certificate of sale as provided in the preceding paragraph the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money and interest at the rate provided in RCW 87.03.270, as now or hereafter amended, from the day of sale until redemption for the use of the purchaser. [1981 c 209 § 7; 1933 c 43 § 10; 1921 c 129 § 20; 1913 c 165 § 16; 1895 c 165 § 15; 1889-90 p 686 § 28; RRS § 7446. Formerly RCW 87.32.190.]

Effective date—1981 c 209: See note following RCW 87.03.215.

87.03.340 Redemption in districts of two hundred thousand acres—Redemption period. Where any tract of land for which irrigation water was not available at the time of the sale, has been sold to a person, other than the irrigation district, by the county treasurer on account of delinquent district assessments in an irrigation district comprising an area of two hundred thousand or more acres of land, no deed shall issue to such purchaser in completion of the sale until after the expiration of two years from and after the date of the sale and said land may be redeemed in the same manner, and by the same persons, now authorized by law at any time before deed is issued. [1941 c 172 § 1; Rem. Supp. 1941 § 7445a. Formerly RCW 87.32.220, part.]

Redemption generally, when and how made—Deed: RCW 87.03.355.

87.03.345 Redemption in districts of two hundred thousand acres—Notice of sale to delinquent owner. Upon the sale of such land to a purchaser, other than the irrigation district, as aforesaid, the secretary of the district shall forthwith at the expense and in the name of the district notify any assessed owner thereof whose name and address appears on the current general tax roll in the treasurer's office of the county in which the land is situated, of the sale. Said notice shall state in writing that the land has been sold for delinquent district assessments, giving a description of the land and date of sale and that if not redeemed within two years from the date of sale, the purchaser thereof shall be entitled to a deed. The notice shall be signed by the secretary and shall be mailed by U.S. mail to the assessed owner of the property at the post office address shown on the tax roll. [1941 c 172 § 2; Rem. Supp. 1941 § 7445b. Formerly RCW 87.32.220, part.]

87.03.350 Redemption in districts of two hundred thousand acres—Construction. RCW 87.03.340 through 87.03.350 shall not be construed to modify the

requirements of the law relating to notice on the part of a certificate holder of application for irrigation deed nor shall the giving of or failure to give, the notice required herein to be given to the land owner whose name and address appear on the current general tax roll, in any manner affect the legality of the sale or the legality of the title of the purchaser, if the property in any instance is not redeemed as required by law. [1981 c 209 § 8; 1941 c 172 § 3; Rem. Supp. 1941 § 7445c. Formerly RCW 87.32.220, part.]

Effective date—1981 c 209: See note following RCW 87.03.215.

Notice of application for deed—Form—Service—Redemption: RCW 87.03.360.

Redemption generally, when and how made—Deed: RCW 87.03.355.

87.03.355 Redemption generally, when and how made—Deed—Cost for making. Redemption may be made by any party in interest at any time before deed is delivered, by paying the amount of the assessment, interest, and costs included in the purchase price and interest on that amount thereof, and the amount of any assessments which the purchaser may have paid thereon, with like interest. If the district is the purchaser, the redemptioner need pay no assessment levied after the assessment for which the land was sold, but all such assessments shall remain a lien, and the land shall be subject to sale therefor. Redemption shall be made in legal tender, and the treasurer shall credit the amount paid to the person named in the certificate and pay it to him on demand, along with the excess, if any, paid by him on the purchase price at the time of sale.

Upon redemption the treasurer shall enter the word "redeemed," the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the certificate is made. If the property is not redeemed within one year from the fifteenth day of January of the year in which it was sold, the treasurer shall upon demand by the holder of the certificate, make a deed of the property to the holder, reciting in the deed substantially the matters contained in the certificate, and that the property was not redeemed. Where the owner of the certificate is not the district, deed shall not issue until a court order of compliance issued pursuant to RCW 87.03.360 is filed with the treasurer and twenty-one days have elapsed since the service or first publication of the notice.

The treasurer shall endorse on the margin of the current district assessment roll opposite the description of the land described in the deed, the date of delivery of the deed and the name of the grantee, and the transfer of the title shall be complete as of the time of delivery of the deed. The treasurer shall receive from the purchaser, for the use of the district, two dollars for making the deed. [1981 c 209 § 9; 1955 c 58 § 5; 1939 c 171 § 5; 1933 c 43 § 11; 1929 c 185 § 2; 1923 c 138 § 12; 1921 c 129 § 21; 1917 c 162 § 7; 1915 c 179 § 16; 1913 c 165 § 17; 1913 c 13 § 5; 1895 c 165 § 16; 1889-90 p 687 § 29; RRS § 7447. Formerly RCW 87.32.210.]

Effective date—1981 c 209: See note following RCW 87.03.215.

87.03.360 Notice of application for treasurer's deed—Form—Service—Court order of compliance—Redemption—Reimbursement for costs or fees. The owner of any certificate of sale for irrigation district assessments, not including irrigation districts, shall, at least twenty-one days before applying for a deed, serve, in the manner provided herein, all parties residing upon the property or having a lien on, incumbrance against, or any other interest in the property according to a title search with a written notice stating that said property has been sold for delinquent irrigation assessments, giving the date of the sale, a description of the property, the amount for which it was sold, and the time the purchaser will apply for a treasurer's deed and stating that the property may be redeemed at any time until such notice has been given and the deed issued. The notice shall be given according to the rules of the superior court on service of process. If personal service cannot be made and service by publication is authorized, then the notice shall be substantially in the following form:

NOTICE OF APPLICATION FOR IRRIGATION TREASURER'S DEED

Notice is hereby given that the undersigned is the owner and holder of an irrigation district certificate of sale covering the land hereinafter described, and, unless redeemed, the undersigned will, on or after the expiration of twenty-one days from the first publication of this notice apply to the county treasurer of the county in which said land is located for a treasurer's deed to said property. The date of said certificate, the amount thereof, the names of the parties to whom said property was assessed, and the description of the property are as follows:

Date of certificate ;
Amount of certificate ;
Party assessed ;
Description of property ;
Date of first publication
Applicant.

In all cases coming under the provisions of this chapter, the court shall review for compliance with the procedures of this chapter and issue an order of compliance before the owner of a certificate of sale or any officer thereof, if the owner is a corporation, is entitled to receive a treasurer's deed. The owner or officer shall file with the treasurer a copy of the court's order of compliance, and the order so filed shall be kept as a part of the permanent records of the office of the treasurer. The holder of the certificate of sale is entitled to reimbursement from the person redeeming the property for costs incurred under this section and costs of service or publication, court fees, title search fees, and reasonable attorneys' fees. [1981 c 209 § 10; 1939 c 171 § 6; RRS § 7447-1. Formerly RCW 87.32.200.]

Effective date—1981 c 209: See note following RCW 87.03.215. Official paper for publication: RCW 87.03.020.

87.03.370 Effect of deed—Matter recited in—Reconveyances—Disposition of proceeds. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that—

- First: That property was assessed as required by law.
Second: That property was equalized as required by law.
Third: That the assessments were levied in accordance with the law.
Fourth: The assessments were not paid.
Fifth: At a proper time and place the property was sold as prescribed by law and by the proper officers.
Sixth: The property was not redeemed.
Seventh: The person who executed the deed was the proper officer.
Eighth: Such deed, duly acknowledged or proved is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessments by the secretary, inclusive, up to the execution of the deed.

Ninth: When the grantee in the deed is a party other than the irrigation district or the county, the deed conveys to the grantee the absolute title to the lands described therein, free from all encumbrances, except general taxes, drainage or diking district assessments, drainage or diking improvement district assessments, and all existing irrigation district assessments.

Tenth: When the grantee in the deed is the irrigation district or the county, the deed conveys to the grantee the title to the lands described therein subject to RCW 87.03.375 through 87.03.415. Upon final judgment in a quiet title action the deed conveys to the grantee absolute title to the lands described therein, free from all encumbrances except drainage or diking district assessments or installments thereof not delinquent at the time of sale, drainage or diking improvement district assessments or installments thereof not delinquent at the time of the sale, also except all existing irrigation district assessments or installments thereof not delinquent at the time of the sale, pursuant to which deed is issued.

Eleventh: If the irrigation district reconveys; which it may do upon installments or for cash, any lands so acquired by it to a grantee who has a right to such reconveyance under RCW 87.03.320 through 87.03.330, the grantee before receiving deed, shall pay all drainage or diking district assessments, drainage or diking improvement district assessments and irrigation district assessments which have been canceled by the deed to the irrigation district, such payment being made to the county treasurer for the benefit of the respective taxing districts entitled thereto, and such grantee shall also pay any expenses of the irrigation district incurred in caring for, operating, or improving said land. Upon reconveyance by an irrigation district, the general property taxes which were canceled by the deed to the irrigation district shall be reinstated for the purpose of collection under chapter 84.64 RCW as if no conveyance to the irrigation district had occurred.

Twelfth: All proceeds received by a county or irrigation district from any lands so acquired, shall be paid to

the county treasurer, and by him distributed pro rata between the county, the irrigation districts, the drainage or diking district, the drainage or diking improvement districts, and the local improvement districts holding liens against said lands at the time the county or the irrigation district acquired title, in proportion to the amounts of the respective liens: *Provided*, That there can be first deducted therefrom and reimbursed to the district or county advancing same, any expenses incurred in caring for, operating, or improving said land: *Provided further*, That as an alternative method, where an irrigation district or a county has heretofore or may hereafter be the grantee, such district or county has the right to pay all general taxes, irrigation, drainage or diking district or diking or drainage improvement district assessments, which were canceled by deed to such district or county, and upon such payments being made the irrigation district or the county shall be the absolute owner of the land and upon sale thereof entitled to retain all the proceeds of sale.

Thirteenth: When the land is owned by the United States, or this state, the provisions of subsections nine, ten and eleven shall not apply, and in such cases the deed shall be prima facie evidence of the right of possession. [1981 c 209 § 11; 1945 c 131 § 1; 1943 c 256 § 1; 1935 c 101 § 1; 1895 c 165 § 17; 1889-90 p 687 § 30; Rem. Supp. 1945 § 7448. Formerly RCW 87.32.230.]

Effective date—1981 c 209: See note following RCW 87.03.215.
Mistake of ownership not to affect sale: RCW 87.03.425.

87.03.375 Actions to quiet district's title—When—Reimbursement of costs and fees, when. In any and all instances in this state in which a treasurer's irrigation assessment deed to real property has been or shall be issued to an irrigation district pursuant to statute and before the district conveys title or an interest in the real property thus acquired, the irrigation district shall institute an action in the superior court in the county where the land is located to quiet title against any and all defects; and to determine adverse claims and the priority thereof as provided in this chapter. Further, the irrigation district shall institute such an action upon the written demand of any person, firm, or corporation claiming an interest in or to such lands. If the action results in a reconveyance of the lands, the court shall order the person, firm, or corporation to pay the irrigation district all cost incurred by the district in the action, including reasonable attorneys' fees. [1981 c 209 § 12; 1933 c 194 § 1; RRS § 7448-1. Formerly RCW 87.32.270, part.]

Effective date—1981 c 209: See note following RCW 87.03.215.

87.03.380 Actions to quiet district's title—Action in rem—Persons to be named in summons and notice. The irrigation district shall have authority to include in one action any and all tracts of land located in one county and owned by said district. Such action shall be one in rem as against every right and interest in and claim against any and every part of the real property involved. All persons residing upon the property or having a lien on, an encumbrance against, or any other interest in the property according to a title search shall be

named in the summons and notice under RCW 87.03.385. [1981 c 209 § 13; 1939 c 171 § 1; 1933 c 194 § 2; RRS § 7448-2. Formerly RCW 87.32.270, part.]

Effective date—1981 c 209: See note following RCW 87.03.215.
Official paper for publication: RCW 87.03.020.

87.03.385 Actions to quiet district's title—Summons and notice—Contents—Service—Subscribed by district attorney. The summons and notice shall be given according to the rules of the superior court on service of process.

The summons and notice in such action shall contain the title of the court; specify in general terms the year for which the irrigation assessment was levied and the amount of the assessment and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the name of the owner or reputed owner appearing on the roll on which assessments for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have all claims of title and all existing liens and claims of every nature against said described real property, except that of the county for taxes levied prior to the date the district acquired title, forever barred; and state that there is a right of redemption prior to completion of the action.

Every summons and notice provided for in this chapter shall be subscribed by the attorney for the district, followed by his post office address. [1981 c 209 § 14; 1933 c 194 § 3; RRS § 7448-3. Formerly RCW 87.32.280.]

Effective date—1981 c 209: See note following RCW 87.03.215.
Civil actions—Commencement of (service of summons): Chapter 4.28 RCW.

87.03.390 Actions to quiet district's title—Redemption before judgment—Certificate. Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the irrigation district, and his or its successors in interest, shall have the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, and not thereafter, to redeem such property by paying the county treasurer the amount of the irrigation assessment for which the property was sold to the district, and the amount of any other irrigation assessments which may have been levied prior to the date of such redemption, together with interest on all such irrigation assessments from the date of delinquency thereof, respectively, at the rate provided in RCW 87.03.270, as now or hereafter amended, and by paying such proportional part of the cost of foreclosure proceedings and of the action herein authorized as the county treasurer shall determine.

Upon redemption of any property before judgment as herein provided, the county treasurer shall issue to the redemptioner a certificate specifying the amount of the irrigation assessments, and costs charged, describing the land and stating that said irrigation assessments have been fully paid and the lien thereof discharged. Such

certificate shall clear the land described therein from the claim of the irrigation district based on any treasurer's deed previously issued and all assessments, interest and costs included in such redemption. [1981 c 209 § 15; 1933 c 194 § 4; RRS § 7448-4. Formerly RCW 87.32.290.]

Effective date—1981 c 209: See note following RCW 87.03.215.
Sales under execution and redemption: Chapter 6.21 RCW.

87.03.395 Actions to quiet district's title—Summary trial—Judgment. At any time after the return day named in the summons and notice the irrigation district shall be entitled to apply for judgment. In case any person has appeared in such action and claimed any interest in the real property involved, adverse to that of the irrigation district, notice of the time when application for judgment will be made shall be given in the manner required by general statute in civil actions. The court shall hear and determine the matter in a summary manner and shall enter judgment according to the rights of the parties and persons concerned in the action. No order of sale shall be made nor shall any sale on execution be necessary to determine the title of the irrigation district to the real property involved in such action. [1933 c 194 § 5; RRS § 7448-5. Formerly RCW 87.32-.320, part.]

Civil actions

entry of judgments: Chapter 4.64 RCW.
judgments—Generally: Chapter 4.56 RCW.

87.03.400 Actions to quiet district's title—Presumption in favor of assessments. In any action brought under *this act the amount of the irrigation assessment for which said property was sold and set forth in the summons and notice shall be prima facie correct and all the presumptions in favor of an irrigation assessment sale and issuance of treasurer's deed existing by law shall obtain. [1933 c 194 § 6; RRS § 7448-6. Formerly RCW 87.32.300.]

*Reviser's note: "This act", see note following RCW 87.03.375.

87.03.405 Actions to quiet district's title—Appearance fee—Deposit. Any person filing a statement in such action shall pay to the clerk of the court an appearance fee in the amount required by the county for appearances in civil action, and shall be required to deposit in the registry of the court, subject to the judgment of the court, the amount of all irrigation assessments, interests and costs and charges aforesaid against the real property to which he lays claim, and no further costs in such action shall be required or recovered. [1933 c 194 § 7; RRS § 7448-7. Formerly RCW 87.32.310.]

Fees of county officers—Clerk's fees: RCW 36.18.020.

87.03.410 Actions to quiet district's title—Appeal. Any person aggrieved by the judgment rendered in such action shall have the right to appeal from the part of said judgment objectionable to him to the supreme court or the court of appeals of the state in the manner and within the time prescribed for appeals in civil actions

generally. [1971 c 81 § 170; 1933 c 194 § 8; RRS § 7448-8. Formerly RCW 87.32.320, part.]

87.03.415 Actions to quiet district's title—Effect of judgment. The final judgment in such action shall be conclusive upon and against every person who may or could claim any lien or any right, title or interest in or to any of the properties involved in said action, including minors, insane persons, those convicted of crime, as well as those free from disability, and against those in actual, open and notorious possession of any of said properties.

Such judgment shall be conclusive as to those who may appeal therefrom, except as to the particular property to which such appellant laid claim in the action and concerning which he appealed, and shall be conclusive as to those in possession and who were not served, except as to any property of which such person is in the actual, open and notorious possession, and in any case where it is asserted that the judgment was not conclusive because of such possession, the burden of showing such actual, open and notorious possession shall be on the one asserting such possession. [1933 c 194 § 9; RRS § 7448-9. Formerly RCW 87.32.330.]

87.03.420 Evidence of assessment, what is. The assessment book or delinquent list, or a copy thereof, certified by the secretary, showing unpaid assessments against any person or property, is prima facie evidence of the assessment of the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. [1895 c 165 § 18; 1889-90 p 688 § 31; RRS § 7449. Formerly RCW 87.32.260.]

87.03.425 Mistake of ownership not to affect sale. When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable. [1889-90 p 688 § 32; RRS § 7450. Formerly RCW 87.32.250.]

87.03.430 Bonds—Interest payments. Whenever interest payments on bonds are due, the treasurer of the county shall pay the same from the bond fund belonging to the district and deposited with the treasurer. Whenever, after ten years from the issuance of the bonds, the fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of the bonds not due as the money in the fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in a newspaper of general circulation in the county for such period of time not less than four weeks as the board shall order for sealed proposals for the redemption of the bonds. The proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for the bonds must be accepted: *Provided*, That no bond shall be redeemed under the foregoing provision at a rate above par. In case the bids are equal,

the lowest numbered bond shall have the preference. In case none of the owners of the bonds shall desire to have the same redeemed, as herein provided for, the money shall be invested by the treasurer of the county, under the direction of the board, in United States bonds, or the bonds of the state, which shall be kept in the bond fund, and may be used to redeem the district bonds whenever the owners thereof may desire. [1985 c 469 § 88; 1983 c 167 § 217; 1921 c 129 § 22; 1895 c 165 § 20; 1889-90 p 688 § 34; RRS § 7451. Formerly RCW 87.16.110.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Power as to incurring indebtedness: RCW 87.03.475.

87.03.435 Construction work—Bonds—Notice—Bids—Contracts. Any person to whom a contract may have been awarded for the construction of a canal or any of the works of the district, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to the district for its use, for at least twenty-five percent of the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public work, and as may be required by resolution of the board. All works shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of the work or the furnishing of the materials, a notice calling for sealed proposals shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than once each week for two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let the work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence: *Provided*, That the provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material: *Provided further*, That the provisions of this section shall not apply in the case of any contract between the district and the United States. [1984 c 168 § 3; 1915 c 179 § 17; 1913 c 165 § 18; 1895 c 165 § 21; 1889-90 p 689 § 35; RRS § 7452. Formerly RCW 87.08.020.]

Official paper for publication: RCW 87.03.020.

Public contracts—Contractor's bond: Chapter 39.08 RCW.

87.03.438 "County treasurer", "treasurer of the county", defined. As used in this chapter, in accordance with RCW 87.03.440, the term "county treasurer" or

"treasurer of the county" or other reference to that office means the treasurer of the district, if the district has designated its own treasurer, unless the context clearly requires otherwise. [1979 ex.s. c 185 § 16.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.03.440 Treasurer—County treasurer as ex officio district treasurer—Designated district treasurer, when—Duties and powers—Bond—Claims—Preliminary notice requirements when claim for crop damage. The treasurer of the county in which is located the office of the district shall be ex officio treasurer of the district, and any county treasurer handling district funds shall be liable upon his official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty as county or district treasurer. The treasurer of each county in which lands of the district are located shall collect and receipt for all assessments levied on lands within his county. There shall be deposited with the district treasurer all funds of the district. He shall pay out such funds upon warrants issued by the county auditor against the proper funds of the district, except the sums to be paid out of the bond fund for interest and principal payments on bonds: *Provided*, That in those districts which designate their own treasurer, the treasurer may issue the warrants or any checks when the district is authorized to issue checks. All warrants shall be paid in the order of their issuance. The district treasurer shall report, in writing, on the first Monday in each month to the directors, the amount in each fund, the receipts for the month preceding in each fund, and file the report with the secretary of the board. The secretary shall report to the board, in writing, at the regular meeting in each month, the amount of receipts and expenditures during the preceding month, and file the report in the office of the board.

The preceding paragraph of this section notwithstanding, the board of directors or board of control of an irrigation district which lies in more than one county and which had assessments in each of two of the preceding three years equal to at least five hundred thousand dollars may designate some other person having experience in financial or fiscal matters as treasurer of the district. In addition, the board of directors of an irrigation district which lies entirely within one county may designate some other person having experience in financial or fiscal matters as treasurer of the district if the board has the approval of the county treasurer to designate some other person. If the board designates a treasurer, it shall require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions which it finds from time to time will protect the district against loss. The premium on the bond shall be paid by the district. The designated treasurer shall collect and receipt for all irrigation district assessments on lands within the district and shall act with the same powers and duties and be under the same restrictions as provided by law for county treasurers acting in matters pertaining to irrigation districts, except the powers, duties, and restrictions

in RCW 87.56.110 and 87.56.210 which shall continue to be those of county treasurers.

In those districts which have designated their own treasurers, the provisions of law pertaining to irrigation districts which require certain acts to be done and which refer to and involve a county treasurer or the office of a county treasurer or the county officers charged with the collection of irrigation district assessments, except RCW 87.56.110 and 87.56.210 shall be construed to refer to and involve the designated district treasurer or the office of the designated district treasurer.

Any claim against the district for which it is liable under existing laws shall be presented to the board as provided in RCW 4.96.020 and upon allowance it shall be attached to a voucher and approved by the chairman and signed by the secretary and directed to the proper official for payment: *Provided*, That in the event claimant's claim is for crop damage the claimant in addition to filing his claim within the one hundred twenty day limit and in the manner specified in RCW 4.96.020 must file with the secretary of the district, or in his absence one of the directors, not less than three days prior to the severance of the crop alleged to be damaged, a written preliminary notice pertaining to the crop alleged to be damaged. Such preliminary notice, so far as claimant is able, shall advise the district; that the claimant has filed a claim or intends to file a claim against the district for alleged crop damage; shall give the name and present residence of the claimant; shall state the cause of the damage to the crop alleged to be damaged and the estimated amount of damage; and shall accurately locate and describe where the crop alleged to be damaged is located. Such preliminary notice may be given by claimant or by anyone acting in his behalf and need not be verified. No action may be commenced against an irrigation district for crop damages unless claimant has complied with the provisions of RCW 4.96.020 and also with the preliminary notice requirements of this section. [1983 c 167 § 218; 1979 c 83 § 1; 1977 ex.s. c 367 § 1; 1969 c 89 § 1; 1967 c 164 § 15; 1961 c 276 § 2. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.030.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

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

"County treasurer", "treasurer of the county", defined: RCW 87.03-438, 87.28.005.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages, procedure: Chapter 4.96 RCW.

87.03.441 Temporary funds. The directors may provide by resolution that the secretary may deposit the following temporary funds in a local bank in the name of the district: (1) A fund to be known as "general fund" in which shall be deposited all moneys received from the sale of land, except such portion thereof as may be obligated for bond redemption, and all rentals, tolls, and all

miscellaneous collections. This fund shall be transmitted to the district treasurer or disbursed in such manner as the directors may designate. (2) A fund to be known as "fiscal fund" in which shall be deposited all collections made by the district as fiscal agent of the United States. (3) A "revolving fund" in such amount as the directors shall by resolution determine, acquired by the issue of coupon or registered warrants or by transfer of funds by warrant drawn upon the expense fund. This fund may be disbursed by check signed by the secretary or such other person as the board may designate, in the payment of such expenditures as the board may deem necessary. This fund shall be reimbursed by submitting copies of approved vouchers and/or copy of payrolls to the county auditor with a claim voucher specifying the fund upon which warrants for such reimbursements shall be drawn. The warrants for such reimbursements shall be made out by the auditor to the "secretary's revolving fund." [1983 c 167 § 219; 1979 c 83 § 2; 1961 c 276 § 3. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.040.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

87.03.442 Bonds of secretary and depositaries. The secretary or other authorized person shall issue receipts for all moneys received for deposit in such funds and he and any other person handling the funds shall furnish a surety bond to be approved by the board and the attorney for the district, in such amount as the board may designate and conditioned for the safekeeping of such funds and the premium thereon shall be paid by the district.

Upon depositing any district funds the secretary shall demand and the depositary bank shall furnish a surety bond, to be approved by the board and the attorney, in an amount equal to the maximum deposit, conditioned for the prompt payment of the deposits upon demand, and the bond shall not be canceled during the time for which it was written. Or the depositary may deposit with the secretary or in some bank to the credit of the district in lieu of the bond, securities approved by the board of a market value in an amount not less than the amount of the maximum deposit. All depositaries which have qualified for insured deposits under any federal deposit insurance act need not furnish bonds or securities, except for so much of the deposit as is not so insured. [1961 c 276 § 4. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.050.]

Conviction of public officer forfeits trust: RCW 9.92.120.

Income from sale of electricity: RCW 87.03.450.

Misconduct of public officers: Chapter 42.20 RCW.

Office to be declared vacant on conviction: RCW 36.18.180.

Penalty for

failure to pay over fees: RCW 36.18.170.

taking illegal fees: RCW 36.18.160.

Power as to incurring indebtedness: RCW 87.03.475.

Public officers—Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Suspension of treasurer: RCW 36.29.090.

87.03.443 Upgrading and improvement fund authorized—Deposits—Use of funds. There may be created for each irrigation district a fund to be known as the upgrading and improvement fund. At least five percent of the revenue of each irrigation district may annually be placed into its upgrading and improvement fund. Moneys from the upgrading and improvement fund may only be used to modernize, improve or upgrade the irrigation facilities of the irrigation district or to respond to an emergency affecting such facilities. [1979 ex.s. c 263 § 4.]

Severability—1979 ex.s. c 263: See note following RCW 43.83B.300.

87.03.445 Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of. The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid for by the board of directors out of the funds received from bond sales as well as other district funds.

For the purpose of defraying the costs and expenses of the organization of the district, and of the care, operation, management, maintenance, repair and improvement of the district and its irrigation water, domestic water, electric power, drainage, or sewer facilities or of any portion thereof, or for the payment of any indebtedness due the United States or the state of Washington, or for the payment of district bonds, the board may either fix rates or tolls and charges, and collect the same from all persons for whom district service is made available for irrigation water, domestic water, electric power, drainage or sewerage, and other purposes, or it may provide for the payment of said costs and expenses by a levy of assessment therefor, or by both said rates or tolls and charges and assessment.

If the assessment method is utilized, the levy of assessments shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform with the provisions of this chapter, relating to the collection of assessments for the payment of principal and interest of bonds herein provided for, and shall be made at the same time.

If the rates or tolls and charges method is adopted in whole or in part, the secretary shall deliver to the board of directors, within the time for filing the assessment roll, a schedule containing the names of the owners or reputed owners, as shown on the rolls of the county treasurer as of the first Tuesday in November of each

year such a schedule is filed of the various parcels of land against which rates or tolls and charges are to be levied, the description of each such parcel of land and the amount to be charged against each parcel for irrigation water, domestic water, electric power, drainage, sewerage and other district costs and expenses. Said schedule of rates or tolls and charges shall be equalized pursuant to the same notice, in the same manner, at the same time and with the same legal effect as in the case of assessments. Such schedule of rates or tolls and charges for a given year shall be filed with the proper county treasurer within the same time as that provided by law for the filing of the annual assessment roll, and the county treasurer shall collect and receipt for the payment of said rates or tolls and charges and credit them to the proper funds of the district. The board may designate the time and manner of making such collections and shall require the same to be paid in advance of delivery of water and other service. All tolls and charges levied shall also at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect, and the same manner of enforcement, and with the same rate of interest from date of delinquency, in case of nonpayment, as other district assessments.

As an alternative method of imposing, collecting, and enforcing such rates or tolls and charges, the board may also base such rates or tolls and charges upon the quantity of irrigation water, domestic water, or electric power delivered, or drainage or sewage disposed of, and may fix a minimum rate or toll and charge to be paid by each parcel of land or use within the district for the delivery or disposal of a stated quantity of each such service with a graduated charge for additional quantities of such services delivered or disposed of. If the board elects to utilize this alternative method of imposing, collecting, and enforcing such rates or tolls and charges, there shall be no requirement that the schedule referred to in the preceding paragraph be prepared, be filed with the board of directors by the secretary, be equalized, or be filed with a county treasurer. The board shall enforce collection of such rates or tolls and charges against property to which and its owners to whom the service is available, such rates or tolls and charges being deemed charges against the property to which the service is available. The board may provide by resolution that where such rates or tolls and charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate not to exceed twelve percent per annum fixed by resolution shall be a lien against the property to which the service was available, subject only to the lien for general taxes. The district may, at any time after such rates or tolls and charges and penalties provided for herein are delinquent for a period of one year, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated. The court may allow, in addition to the costs and disbursements provided by statute, such attorney's fees as it may adjudge reasonable. The action

shall be in rem against the property, and in addition may be brought in the name of the district against an individual, or against all of those who are delinquent, in one action, and the rules of the court shall control as in other civil actions. The board may in the same year use the assessment method for part of the lands in the district and the rates or tolls and charges method for the remaining lands in the district in such proportion as it may deem advisable for the best interest of the district.

The procedures herein provided for the collection and enforcement of rates, tolls and charges also shall be applicable and available to the districts board of directors for the collection and enforcement of charges for water imposed by contract entered into or administered by the district's board of directors. [1979 ex.s. c 185 § 5; 1939 c 171 § 7; 1931 c 60 § 5; 1929 c 185 § 4; 1915 c 179 § 18; 1913 c 165 § 20; 1889-90 p 690 § 37; RRS § 7454. Formerly RCW 87.08.060.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Assessments, when delinquent—Notice—Collection—Additional fee for delinquency: RCW 87.03.270.

Board's powers and duties generally—Condemnation procedure: RCW 87.03.140.

Bonds—Election for—Form and contents—Facsimile signatures, when, procedure—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty: RCW 87.03.200.

Equalization of assessments: RCW 87.03.255.

Levies, amount—Special funds—Failure to make levy, procedure: RCW 87.03.260.

Lien of assessments: RCW 87.03.265.

Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section: RCW 87.03.215.

Property taxes—Listing of property: Chapter 84.40 RCW.

Sale or pledge of bonds: RCW 87.03.210.

Sale, when and how made: RCW 87.03.315.

87.03.450 Income from sale of electricity. All income derived from the sale, delivery and distribution of electrical energy, shall be deposited with the county treasurer of the county in which the office of the board of directors of the district is located, and shall be apportioned to such fund or funds of the district authorized by law, as the board of directors shall deem advisable, including, but not limited to the payment of district bonds or any portion of the same for which such revenues have been pledged and thereafter said income, or such portion thereof so pledged, shall be placed by the county treasurer to the credit of the fund from which said bonds are required to be paid until the same or the portion thereof secured by such pledge are fully paid. [1979 ex.s. c 185 § 6; 1933 c 31 § 2; RRS § 7454-1. Formerly RCW 87.08.070.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Office of board: RCW 87.03.115.

87.03.455 District's right to cross other property. The board of directors shall have power to construct the *said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume, which the route of said canal or canals may intersect or

cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by *said works, shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. [1889-90 p 691 § 38; RRS § 7455. Formerly RCW 87.08.160.]

***Reviser's note:** The "said works" apparently refers to those specified in RCW 87.03.445.

Condemnation: RCW 87.03.140 through 87.03.150.

87.03.460 Compensation and expenses of directors, officers, employees. The directors shall each receive not to exceed forty dollars per day in attending meetings and while performing other services for the district, to be fixed by resolution and entered in the minutes of their proceedings, and in addition thereto their reasonable expenses in accordance with chapter 42.24 RCW. The board shall fix the compensation of the secretary and all other employees. [1984 c 168 § 4; 1980 c 23 § 1; 1979 c 83 § 3; 1975 1st ex.s. c 163 § 2; 1965 c 16 § 1; 1951 c 189 § 1; 1919 c 180 § 14; 1917 c 162 § 8; 1895 c 165 § 23; 1889-90 p 692 § 39; RRS § 7456. Formerly RCW 87.08.100.]

87.03.470 Special assessments—Election—Notes. (1) The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this chapter including any purpose for which the bonds of the district or the proceeds thereof might be lawfully used. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of RCW 87.03.200. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used and the number of installments in which it is to be paid. At such election the ballot shall contain the words "Assessment Yes" and "Assessment No." If the majority of the votes cast are "Assessment Yes" the board may immediately or at intervals thereafter incur indebtedness to the amount of said special assessment for any of the purposes for which

the proceeds of said assessment may be used, and may provide for the payment of said indebtedness by the issue and sale of notes of the district to an amount equal to said authorized indebtedness, which notes shall be payable in such equal installments not exceeding three in number as the board shall direct. Said notes shall be payable by assessments levied at the time of the regular annual levy each year thereafter until fully paid. The amount of the assessments to be levied shall be ascertained by adding fifteen percent for anticipated delinquencies to the whole amount of the indebtedness incurred and interest. Each assessment so levied shall be computed and entered on the assessment roll by the secretary of the board, and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid to the county treasurer of the county to the credit of said district, for the purposes specified in the notice of such special election: *Provided, however*, That the board of directors may at their discretion issue said notes in payment for labor or material, or both, used in connection with the purposes for which such indebtedness was authorized. Notes issued under this section shall bear interest at a rate determined by the board, payable semiannually. Such notes may be in any form, including bearer notes or registered notes as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 220; 1981 c 156 § 28; 1921 c 129 § 24; 1915 c 179 § 19; 1895 c 165 § 24; 1889-90 p 692 § 41; RRS § 7458. Formerly RCW 87.32.110.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Assessments: RCW 87.03.240 through 87.03.255, 87.03.265 through 87.03.305.

Ballots in all elections: RCW 87.03.075.

Elections are governed by irrigation district laws: RCW 87.03.030.

87.03.475 Power as to incurring indebtedness. (1) The board shall incur no debt or liability in excess of the express provisions of this title. It may without an election and levy therefor pay the necessary costs and expenses of organizing and may make surveys, do engineering work, and conduct a general investigation to determine the feasibility of the proposed irrigation project, and may incur an indebtedness therefor prior to levy, which indebtedness on account of surveys, engineering and investigations shall not exceed fifty cents an acre, and shall be assessable against the lands within the district. In cases of emergency, making it necessary to incur indebtedness in order to continue the operation of the irrigation system or any part thereof, the board by resolution may incur such indebtedness not exceeding the amount actually necessary to meet the requirements of the emergency. It may incur indebtedness necessary to carry on the ordinary administrative affairs of the district and if the district acquires an irrigation system before making its first regular annual levy, the board

may incur such indebtedness necessary to pay the ordinary expenses of operation and maintenance until the regular annual levy is made.

The board may issue warrants for the payment of any indebtedness incurred under this section, which shall bear interest at a rate or rates determined by the board, and it shall include in its next annual levy for the payment of the expenses of operation and maintenance, the amount of all warrants issued by virtue hereof.

The board may issue as a general obligation of the district coupon or registered warrants in denominations not in excess of five hundred dollars, bearing interest as determined by the board. Such warrants may be registered as provided in RCW 39.46.030. Such warrants shall mature in not more than five years and may be used, or the proceeds thereof, in the purchase of grounds and buildings, machinery, vehicles, tools or other equipment for use in operation, maintenance, betterment, reconstruction or local improvement work, and for creating a revolving fund for carrying on such work as in this title provided. The proceeds of the warrants shall be paid to the district treasurer who shall place them in an appropriate fund and pay them out upon warrants of the district. The maximum indebtedness hereby authorized shall not exceed one dollar per acre of the total irrigable area within the district. No warrant shall be sold for less than par. They shall state on their face that they are a general obligation of the district, the purposes for which they are used, and that they are payable on or before maturity. They shall be retired by assessments levied in accordance with the provisions of this title at the time other assessments are levied.

The board may accumulate by assessment a fund to be designated as the "capital fund" to be used for the purposes for which the above warrants may be used. The total of such fund shall not exceed one dollar per acre of the total irrigable area in the district and shall be accumulated in not less than five annual installments. The fund shall not be permanently depleted or reduced but shall be replaced from year to year by assessments on any lands of the district benefited by the use thereof. The reasonable value of all grounds, buildings, machinery, vehicles, tools or other equipment on hand, purchased with such fund, and the revolving fund, if any, derived from such fund, shall be a part of the capital fund.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 221; 1981 c 156 § 29; 1953 c 108 § 1; 1921 c 129 § 25; 1917 c 162 § 9; 1915 c 179 § 20; 1895 c 165 § 25; 1889-90 p 693 § 42; RRS § 7459. Formerly RCW 87.01.220.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.03.480 Local improvement districts—Petition—Bond. Any desired special construction, reconstruction, betterment or improvement or purchase or acquisition of improvements already constructed, for any authorized district service, including but not limited to

the safeguarding of open canals or ditches for the protection of the public therefrom, which are for the special benefit of the lands tributary thereto and within an irrigation district may be constructed or acquired and provision made to meet the cost thereof as follows:

The holders of title or evidence of title to one-quarter of the acreage proposed to be assessed, may file with the district board their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially assessed therefor. The petition shall be accompanied by a bond in the sum of one hundred dollars with surety to be approved by the board, conditioned that the petitioners will pay the cost of an investigation of the project and of the hearing thereon if it is not established. The board may at any time require a bond in an additional sum. Upon the filing of the petition the board with the assistance of a competent engineer, shall make an investigation of the feasibility, cost, and need of the proposed local improvement together with the ability of the lands to pay the cost, and if it appears feasible, they shall have plans and estimate of the cost prepared. If a protest against the establishment of the proposed improvement signed by a majority of the holders of title in the proposed local district is presented at or before the hearing, or if the proposed improvement should be found not feasible, too expensive, or the lands to be benefited insufficient security for the costs, they shall dismiss the petition at the expense of the petitioners. [1959 c 75 § 9; 1941 c 171 § 1; 1919 c 180 § 15; 1917 c 162 § 10; Rem. Supp. 1941 § 7460. Formerly RCW 87.36.010.]

Safeguarding open canals or ditches: RCW 35.43.040, 35.43.045, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, and 87.03.526.

87.03.485 Local improvement districts—Notice—Hearing—Initiation by board, procedure. In the event that the said board shall approve said petition, the board shall fix a time and place for the hearing thereof and shall publish a notice once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date and shall mail such a notice on or before the second publication date by first class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed. Such notice must be published in a newspaper of general circulation in each county in which any portion of the land proposed to be included in such local improvement district lies. Such notice shall state that the lands within said described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that bonds for such local improvement district are proposed to be issued as the bonds of the irrigation district, or that a contract is proposed to be entered into between the district and the United States or the state of Washington, or both, that the lands within said local

improvement district are to be assessed for such improvement, that such bonds or contract will be a primary obligation of such local improvement district and a general obligation of the irrigation district and stating a time and place of hearing thereon. At the time and place of hearing named in said notice, all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of bonds or the entering into of a contract as aforesaid. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any landowner whose lands can be served or will be benefited by the proposed improvement, may make application to the board at the time of hearing to include such land and the board of directors in such cases shall, at its discretion, include such lands within such district. The board of directors may exclude any land specified in said notice from said district provided, that in the judgment of the board, the inclusion thereof will not be practicable.

As an alternative plan and subject to all of the provisions of this chapter, the board of directors may initiate the organization of a local improvement district as herein provided. To so organize a local improvement district the board shall adopt and record in its minutes a resolution specifying the lands proposed to be included in such local improvement district or by describing the exterior boundaries of such proposed district or by both. Said resolution shall state generally the plan, character and extent of the proposed improvements, that the land proposed to be included in such improvement district will be assessed for such improvements; and that local improvement district bonds of the irrigation district will be issued or a contract entered into as hereinabove in this section provided to meet the cost thereof and that such bonds or contract will be a primary obligation of such local improvement district and a general obligation of the irrigation district. Said resolution shall fix a time and place of hearing thereon and shall state that unless a majority of the holders of title or of evidence of title to lands within the proposed local improvement district file their written protest at or before said hearing, consent to the improvement will be implied.

A notice containing a copy of said resolution must be published once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date, and shall be mailed on or before the second publication date by first class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed, and the hearing thereon shall not be held in less than twenty days from the adoption of such resolution. Such notice must be published in one newspaper, of general circulation, in each county in which any portion of the land proposed to be included in such local improvement district lies. Said hearing shall be held and all subsequent proceedings conducted in accordance with the provisions

of this act relating to the organization of local improvement districts initiated upon petition. [1983 c 167 § 222; 1979 ex.s. c 185 § 7; 1970 ex.s. c 70 § 1; 1921 c 129 § 26; 1917 c 162 § 11; RRS § 7461. Formerly RCW 87.36.020 and 87.36.030.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.03.487 Local improvement districts—Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed local improvement district shall be mailed to the owners of any property located outside of the proposed local improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 7.]

87.03.490 Local improvement districts—Adoption of plan—Bonds—Form and contents—Facsimile signatures, when, procedure—New lands may be included—Penalty. (1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the said improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of said improvement shall be paid. The cost of said improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of said improvement. Said bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within said local improvement district shall be primarily liable to assessment for the principal and interest of said bonds and that said bonds are also a general obligation of the said district. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars, and no bond shall be sold for less than par. Any contract entered into for said local improvement by the district with the United States or the state of Washington, or both although all the lands within said local improvement district shall be primarily liable to assessment for the principal and interest thereon, shall be a general obligation of the irrigation district. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract. Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of said district affixed. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: *Provided*, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his manual signature certified by him under oath, whereupon that officer's facsimile signature has the same legal effect as his manual signature: *Provided, further*, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: *And provided further*, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, shall be guilty of felony.

The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number _____."

Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: *Provided*, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the said local improvement district and shall be liable for the indebtedness of the said local improvement district in the same proportion and same manner and subject to assessment as if said lands had been incorporated in said improvement district at the beginning of its organization.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 223; 1981 c 156 § 30; 1977 ex.s. c 119 § 2; 1970 ex.s. c 70 § 2; 1921 c 129 § 27; 1919 c 180 § 16; 1917 c 162 § 12; RRS § 7462. Formerly RCW 87.36.040.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.03.495 Local improvement districts—Assessments, how made and collected—Disposal of bonds. The cost of the improvement and of the operation and maintenance thereof, if any, shall be especially assessed against the lands within such local improvement district in proportion to the benefits accruing thereto, and shall be levied and collected in the manner provided by law for the levy and collection of land assessments or toll assessments or both such form of assessments.

All provisions for the assessment, equalization, levy and collection of assessments for irrigation district purposes shall be applicable to assessments for local improvements except that no election shall be required to authorize said improvement or the expenditures therefor or the bonds issued to meet the cost thereof or the contract authorized in RCW 87.03.485 to repay the cost thereof. Assessments when collected by the county treasurer for the payment for the improvement of any local improvement district shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No. _____."

Bonds issued under *this chapter shall be eligible for disposal to and purchase by the director of the department of conservation and development under the provisions of the state reclamation act.

The cost or any unpaid portion thereof, of any such improvement, charged or to be charged or assessed against any tract of land may be paid in one payment under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid over to the county treasurer who shall place the same in the appropriate fund. No such payment shall thereby release such tract from liability to assessment for deficiencies or delinquencies of the levies in such improvement district until all of the bonds or the contract, both principal and interest, issued or entered into for such local improvement district have been paid in full. The receipt given for any such payment shall have the foregoing provision printed thereon. The amount so paid shall be included on the annual assessment roll for the current year, provided, such roll has not then been delivered to the treasurer, with an appropriate notation by the secretary that the amount has been paid. If the roll for that year has been delivered to the treasurer then the payment so made shall be added to the next annual assessment roll with appropriate notation that the amount has been paid. [1970 ex.s. c 70 § 3; 1957 c 68 § 1; 1949 c 103 § 2; 1921 c 129 § 28; 1917 c 162 § 13; Rem. Supp. 1949 § 7463. Formerly RCW 87.36.050.]

*Reviser's note: The language "this chapter" in the third paragraph first appeared in 1957 c 68 and apparently then referred to bonds for

local improvement districts in chapter 87.36 RCW. Such provisions are now codified as RCW 87.03.480 through 87.03.525.

Assessment, equalization, levy and collection of assessments for irrigation district purposes: RCW 87.03.240 through 87.03.280.

87.03.500 Local improvement districts—Payment of bonds. In the event of the failure of the lands within the local improvement district to furnish money sufficient for the payment of principal or interest of the bonds or the contract as provided for in RCW 87.03.485 for such local improvement work and there shall be a default in the payment of principal or interest as aforesaid, the amount delinquent shall be paid by the general warrants of the irrigation district at large or, in the event of a contract, by whatever means of payment is called for thereunder, but the lands of the local improvement district shall not thereby become released from liability for special assessment therefor. Such warrants, if issued, shall be redeemed as soon as there shall be available money in the bond redemption fund of the local improvement district. [1970 ex.s. c 70 § 4; 1921 c 129 § 29; 1917 c 162 § 14; RRS § 7464. Formerly RCW 87.36.060.]

87.03.505 Local improvement districts—L.I.D. unable to pay costs—Survey—Reassessments. Whenever, by reason of the sale of land within a local improvement district for unpaid taxes or assessments, or for any other reason, it may appear apparent that the remaining lands within any such local improvement district are and will be unable to pay out the cost of such improvement or the bond issue or contract indebtedness therefor, the landowners of the local improvement district may petition the directors of the irrigation district or the directors of the district may upon their own initiative, and either upon receipt of such petition or the passing of such resolution the directors of the irrigation district shall cause a complete survey to be made of the affairs of the local improvement district pertaining to the payment of the cost of said improvement, and shall determine the amount of property remaining in the hands of private owners that is still subject to assessment for the improvement, the amount of land standing in the name of the district which is subject to assessment for said improvement and the amount of any lands which may have been entirely removed from the liability of any such assessments, and such other and pertinent data as may be necessary, in order to determine the ability of said remaining private property to pay the remaining balance of the cost of said improvement, and if as a result thereof it shall appear that the remaining private property will be unable to pay the said remaining cost of the improvement, the said board of directors shall determine what amount and to what extent the remaining private property will be able to equitably pay on the cost of said improvement which shall include the privately owned property and district owned property and such remaining portion of the cost of said improvement which the directors find said land can equitably pay and in such amounts as in the judgment of the directors shall appear equitable after taking all circumstances into consideration, shall be assessed against the lands within

such local improvement district and shall be levied and collected in the manner as in this act provided for the assessment and collection of construction costs and shall be payable over a period of not more than twenty years. Notwithstanding all provisions in this chapter contained for the assessment, equalization, levy and collection of assessments no election shall be required to authorize the issue of bonds or the entering into a contract to cover the cost thereof. Assessments when collected by the county treasurer for the payment shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No. _____."

The costs or any unpaid portion thereof, of any such assessment, charged or to be charged or assessed against any tract of land may be paid in one payment by the owner or by any one acting for such owner, under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid to the county treasurer who shall place the same in the appropriate fund. Upon the payment in full of the amount charged or to be charged or assessed against any particular tract of land, said tract of land shall be thereupon entirely, fully and finally released of any and all further liability by reason of such improvement and the amount charged or to be charged and assessed against each tract of land as designated by said board shall be the limit of the liability of said tract of land for the costs of said improvement, except insofar as said land may be additionally liable by reason of being within the irrigation district and being liable for its portion of the general obligation of the district. The determination of the amount charged or to be charged or assessed against any tract of land may be appealed by the owner of said tract from the decision of the board of directors to the superior court of the county in which the property is located at any time within twenty days from the date of the passage of a resolution by the board of directors with reference thereto: *Provided, however*, That in the event said irrigation district shall have borrowed or have an application on file for the borrowing of money from the reconstruction finance corporation, or its successor, or has entered into a contract with the United States or the state of Washington, or both, then in that event before any such reassessment shall be made it shall first receive the approval of said reconstruction finance corporation, or its successor or the United States or the state of Washington, or both, as the case may be. [1970 ex.s. c 70 § 5; 1935 c 128 § 1; RRS § 7464-1. Formerly RCW 87.36.070 and 87.36.080.]

Assessment, equalization, levy and collection of assessments for irrigation district purposes: RCW 87.03.240 through 87.03.280.

87.03.510 Local improvement districts—Irrigation district L.I.D. guarantee fund. There is hereby established for each irrigation district in this state having local improvement districts therein a fund for the purpose of guaranteeing to the extent of such fund and in the manner herein provided, the payment of its local improvement bonds and warrants issued or contract entered into to pay for the improvements provided for in

this act. Such fund shall be designated "local improvement guarantee fund" and for the purpose of maintaining the same, every irrigation district shall hereafter levy from time to time, as other assessments are levied, such sums as may be necessary to meet the financial requirements thereof: *Provided*, That such sums so assessed in any year shall not be more than sufficient to pay the outstanding warrants or contract indebtedness on said fund and to establish therein a balance which shall not exceed five percent of the outstanding obligations thereby guaranteed. Whenever any bond redemption payment, interest payment, or contract payment of any local improvement district shall become due and there is insufficient funds in the local improvement district fund for the payment thereof, there shall be paid from said local improvement district guarantee fund, by warrant or by such other means as is called for in the contract, a sufficient amount, which together with the balance in the local improvement district fund shall be sufficient to redeem and pay said bond or coupon or contract payment in full. Said warrants against said guarantee fund shall draw interest at a rate determined by the board and said bonds and interest payments shall be paid in their order of presentation or serial order. Whenever there shall be paid out of the guarantee fund any sum on account of principal or interest of a local improvement bond or warrant or contract the irrigation district, as trustee for the fund, shall be subrogated to all of the rights of the owner of the bond or contract amount so paid, and the proceeds thereof, or of the assessment underlying the same shall become part of the guarantee fund. There shall also be paid into such guarantee fund any interest received from bank deposits of the fund, as well as any surplus remaining in any local improvement district fund, after the payment of all of its outstanding bonds or warrants or contract indebtedness which are payable primarily out of such local improvement district fund. [1983 c 167 § 224; 1981 c 156 § 31; 1970 ex.s. c 70 § 6; 1935 c 128 § 2; RRS § 7464-2. Formerly RCW 87.36.090.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.

Levies, amount—Special funds: RCW 87.03.260.

87.03.515 Local improvement districts—Refunding bonds. It shall be lawful for any irrigation district which has issued local improvement district bonds for said improvements, as in this chapter provided, to issue in place thereof an amount of general bonds of the irrigation district not in excess of such issue of local improvement district bonds, and to sell the same, or any part thereof, or exchange the same, or any part thereof, with the owners of such previously issued local improvement district bonds for the purpose of redeeming said bonds: *Provided, however*, That all the provisions of this chapter regarding the authorization and issuing of bonds shall apply, and: *Providing, further*, That the issuance of said bonds shall not release the lands of the local improvement district or districts from liability for special assessments for the payment thereof: *And provided further*, That the lien of any issue of bonds of the district

prior in point of time to the issue of bonds or local improvement district bonds herein provided for, shall be deemed a prior lien. [1983 c 167 § 225; 1921 c 129 § 30; 1917 c 162 § 15; RRS § 7465. Formerly RCW 87.36.100.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.03.520 Local improvement districts—Contracts with state or United States for local improvement work. Any irrigation district may contract with the United States, or the state of Washington, for local improvement work, and for such purpose may form local improvement districts as herein provided.

Authorization of local improvement district bonds or of contract with the United States, or the state of Washington, for local improvement work may be confirmed in the same manner as provided in RCW 87.03.785 to 87.03.805, inclusive. [1921 c 129 § 31; 1917 c 162 § 16; RRS § 7466. Formerly RCW 87.36.110.]

87.03.522 Irrigation district authorized to finance local improvements with general district funds. In lieu of the issuance of local improvement district bonds or the entering into a contract with the United States or the state of Washington, or both, to secure the funds for or to repay the cost of any improvement to be charged, in whole or in part, against any local improvement district organized pursuant to this chapter, any irrigation district may finance the cost of said local improvement with any general district funds which may be available for said purpose and provide, in such manner as the district's directors may determine, for the repayment, with or without interest as the district's directors determine, through assessments against the lands in the local improvement district levied in the same manner authorized by this chapter of said general district moneys thus advanced. [1983 c 167 § 226; 1970 ex.s. c 70 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.03.525 Local improvement districts—Provisions applicable to districts formerly organized. Any local improvement district heretofore duly organized may avail itself of and be subject to any of the provisions of this chapter increasing the number of annual installments, not to exceed fifty, after the directors of the irrigation district duly adopt a resolution to that effect, and it shall be the duty of the board of directors to adopt such resolution whenever in the judgment of the board the best interests of the local improvement district will be served thereby, and the interests of the irrigation district will not be jeopardized. [1970 ex.s. c 70 § 7; 1919 c 180 § 17; RRS § 7467. Formerly RCW 87.36.120.]

87.03.526 Local improvement districts—Safeguarding open canals or ditches—Assessments and benefits. Whenever a local improvement district is established within an irrigation district for the safeguarding of the public from the dangers of open canals or

ditches the rate of assessment per square foot in the local district may be determined by any of the methods provided for assessment of similar improvements in cities or towns in chapter 35.44 RCW, and the lands specially benefited by such improvements shall be the same as provided in chapter 35.43 RCW for similar improvements in cities or towns. [1959 c 75 § 10. Formerly RCW 87.36.130.]

Safeguarding open canals or ditches: RCW 35.43.040, 35.43.045, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, and 87.03.480.

87.03.527 Local improvement districts—Alternative methods of formation. Whenever a local improvement district is sought to be established within an irrigation district, in addition to the procedures provided in RCW 87.03.480 through 87.03.525 there may be employed any method authorized by law for the formation of districts or improvement districts so that when formed it will qualify under the provisions of chapter 89.16 RCW. [1959 c 104 § 7. Formerly RCW 87.36.140.]

87.03.530 Consolidation of irrigation districts—Authorization. Two or more irrigation districts may be consolidated into one district and may include in such district other lands susceptible of irrigation in the manner provided in this act, and upon the organization of such consolidated district it shall be an organized irrigation district subject to all the provisions of this chapter. [1919 c 180 § 18; RRS § 7468. Formerly RCW 87.40.010.]

87.03.535 Consolidation of irrigation districts—Proceedings for consolidation—Elections. For the purpose of organizing a consolidated irrigation district a petition signed by fifty or a majority of the holders of title to, or evidence of title to land susceptible of irrigation within the proposed district shall be presented to the board of county commissioners of the county in which the lands or the greater portion thereof are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and the name of each existing irrigation district proposed to be included therein, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as a consolidated irrigation district. Such petition shall be accompanied by bond as provided in RCW 87.03.020 and thereupon the same proceedings shall be had for the organization of such consolidated district as is provided in RCW 87.03.020 and 87.03.035 through 87.03.045, and the organization of such consolidated district shall be perfected in the same manner as provided in this chapter for the organization of new districts, except as otherwise provided in this section. The board of directors of each irrigation district proposed to be included in such consolidated district shall be served with a copy of the petition for the organization of such consolidated district together with notice at the time and place of hearing of such petition, at least twenty days prior to such hearing, and the board of county commissioners upon the hearing of such petition shall not grant

the same or call an election if it shall appear that the board of directors of any existing irrigation district proposed to be included in such consolidated district have by resolution, regularly passed and entered upon the minutes of the directors meetings of such district, voted against the inclusion of such district into such proposed consolidated district. The board of county commissioners upon the hearing of such petition, shall not modify the boundaries of the proposed district to exclude any of the lands which are contained in any of the existing districts proposed to be included in such consolidated districts, and the order calling an election shall provide an election by the electors of each existing district proposed to be included in such consolidated district, and for an election by the electors of that part of the proposed district not included in any existing district, but no elector may cast more than one vote at such election. Such proposed district shall not be declared organized unless two-thirds of all votes cast in each existing district shall be Irrigation District—Yes, and unless two-thirds of all the votes cast in that part of the proposed district not included in any existing district shall be Irrigation District—Yes. If the organization of such consolidated district is not effected the organization of the district proposed to be included in such consolidated district shall not be affected. [1919 c 180 § 19; RRS § 7469. Formerly RCW 87.40.020.]

87.03.540 Consolidation of irrigation districts—Directors—Disposition of affairs of included districts. The board of directors of each included district shall hold office until the board of directors of the consolidated district shall have been elected and shall have qualified, and thereupon the term of office of the directors of such included district shall terminate, and the board of directors of such consolidated district shall have and exercise all the powers and duties in regard to such included district as were vested in the board of directors of such district. Each organized district included in a consolidated district shall either retain its corporate existence so far as necessary for the purpose of carrying out all contracts of such district, and until its indebtedness has been paid in full, or the board of directors of the consolidated district may constitute each such included district a local improvement district for the purpose of carrying out the obligations of, such included district and shall have all the power possessed by the board of directors of such included district to carry out all contracts of such included district to levy, assess and cause to be collected any and all assessments or charges against all of the land within such local improvement district that may be necessary or required to provide for the payment of all the bonds, warrants, and other indebtedness thereof, and to provide for the construction, reconstruction, betterment, improvement, maintenance and operation of all such work as are for the special benefit of the land in such local improvement district. Until such assessments shall have been collected and all indebtedness of the respective included districts paid, separate funds shall be maintained for each such district as were maintained in such included districts prior to the

consolidation. A petition shall not be required for the establishment of the lands of such included districts as local improvement districts. [1919 c 180 § 20; RRS § 7470. Formerly RCW 87.40.030.]

Board's powers and duties generally: RCW 87.03.140.

87.03.545 Consolidation of irrigation districts—Obligations of included districts unaffected. The inclusion of an organized district into a consolidated district shall not affect or impair any bonds or obligations of such included district and the holders of the bonds of any such included district shall be entitled to all remedies for the enforcement of the same as if such district had not been consolidated, and all obligations that shall have been incurred by any district prior to its being included in a consolidated district shall be a prior lien to any obligation that may be incurred against such land under such consolidated district: *Provided, however,* That the board of directors of the consolidated district may when authorized thereto, exchange any bonds of the consolidated district for the bonds of such included districts upon obtaining the consent of such bond holders. If any included district shall prior to the time of its inclusion into a consolidated district have entered into any contract with the United States pursuant to the provisions of this chapter, and the board of directors of such consolidated district propose to enter into a contract with the United States by the consolidated district, said board of directors, when authorized thereto, shall enter into such contract with the United States, and may in such event, with the consent of the United States, cancel any contract previously entered into between any included district and the United States. [1919 c 180 § 21; RRS § 7471. Formerly RCW 87.40.040.]

Bonds: RCW 87.03.200 through 87.03.235.

Powers and duties of board (contracts with the state and United States): RCW 87.03.140.

87.03.550 Consolidation of irrigation districts—Property vested in new district—Credit. The board of directors of an included district shall before the expiration of their term of office cause to be prepared and filed with the board of directors of the consolidated district a statement of all property of such included district, and upon the organization of such consolidated district, the property, of such included district shall, subject to the rights of the holders of the bonds or other obligations of such district, become the property of such consolidated district, and the board of directors of such consolidated district shall in making assessments for such consolidated district cause equitable credit to be given to the lands of such included district for such property received as is of value and benefit to the consolidated district. [1919 c 180 § 22; RRS § 7472. Formerly RCW 87.40.050.]

87.03.551 Consolidation of irrigation districts—Procedures supplemental to boundary change provisions. The procedure herein provided for the consolidation of districts shall not supersede or repeal any provisions of

this act providing for changing the boundaries of any irrigation district, but shall be additional and supplemental thereto. [1919 c 180 § 23; RRS § 7473.]

87.03.555 Change of boundaries authorized—Effect. The boundaries of any irrigation district now or hereafter organized under the provisions of this chapter may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made, except as hereinafter expressly in RCW 87.03.645 prescribed: *Provided*, That in case contract has been made between the district and the United States, or the state of Washington, as in RCW 87.03.140 provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior, or the state reclamation board, or the director of conservation and development shall assent thereto in writing and such assent be filed with the board of directors. [1921 c 129 § 32; 1915 c 179 § 21; 1889–90 p 694 § 47; RRS § 7474. Formerly RCW 87.44.010.]

Consolidation of irrigation districts: RCW 87.03.530 through 87.03.551.

87.03.560 Adding lands to district—Petition, contents—Acknowledgment. The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous and which, taken together, constitute one tract of land, may file with the board of directors of said district a petition in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners respectively of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged. [1889–90 p 694 § 48; RRS § 7475. Formerly RCW 87.44.020, part.]

Acknowledgments: Chapter 64.08 RCW.

87.03.565 Adding lands to district—Notice—Contents—Service. The secretary of the board of directors shall cause a notice of the filing of such petition to be published in the same manner and for the same

time that notice of special elections for the issue of bonds are required by this chapter to be given. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter. [1963 c 68 § 3; 1921 c 129 § 33; 1889–90 p 695 § 49; RRS § 7476. Formerly RCW 87.44.030.]

*Notice of special elections for the issue of bonds: RCW 87.03.200.
Official paper for publication: RCW 87.03.020.*

87.03.570 Adding lands to district—Hearing—Assent. The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. [1889–90 p 695 § 50; RRS § 7477. Formerly RCW 87.44.040.]

87.03.575 Adding lands to district—Payment for benefits received required. The board of directors to whom such petition to include other lands in the district is presented, shall require, as a condition precedent to the granting of the petition, that the petitioners shall severally pay, or give approved security upon such terms as may be prescribed by the board to pay, to such district such respective sums as shall be determined by the board at the hearing above provided for, which sums shall be such equitable amount as such land shall pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1915 c 179 § 22; 1913 c 165 § 21; 1889–90 p 696 § 51; RRS § 7478. Formerly RCW 87.44.050.]

87.03.580 Adding lands to district—Order. The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition, or some part thereof. The order shall describe the boundaries of lands included, as aforesaid; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary and may at its option redefine the boundaries of the district, or so much of the same as it deems advisable. [1947 c 241 § 1; 1889–90 p 696 § 52; Rem. Supp. 1947 § 7479. Formerly RCW 87.44.060, part.]

87.03.585 Adding lands to district—Resolution. If any person interested in said district, or the proposed change of its boundaries, shall show cause, as aforesaid, why such boundaries should not be changed and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed. [1889–90 p 696 § 53; RRS § 7480. Formerly RCW 87.44.060, part.]

87.03.590 Adding lands to district—Election—Notice—How conducted. Upon the adoption of the resolution mentioned in RCW 87.03.585, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and shall cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted, in the manner prescribed by this act in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced. [1889–90 p 697 § 54; RRS § 7481. Formerly RCW 87.44.070.]

Official paper for publication: RCW 87.03.020.

Special election for the issue of bonds: RCW 87.03.200.

(1987 Ed.)

87.03.595 Adding lands to district—Order changing boundaries—Record. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in the matter. But if a majority of the votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries of the district be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary. [1961 c 18 § 2. Prior: 1889–90 p 697 § 55; RRS § 7482. Formerly RCW 87.44.080, part.]

87.03.600 Adding lands to district—Change of boundaries recorded—Effect. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the offices of county auditor and county assessor of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district. [1961 c 18 § 3. Prior: 1921 c 129 § 34; 1889–90 p 697 § 56; RRS § 7483. Formerly RCW 87.44.080, part.]

87.03.605 Adding lands to district—Petition to be recorded—Admissible as evidence. Upon the filing of the copies of the order, as in RCW 87.03.600 mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition. [1889–90 p 698 § 57; RRS § 7484. Formerly RCW 87.44.090.]

87.03.610 Adding lands to district—Guardian, administrator or executor may act. A guardian, an executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed. [1889–90 p 698 § 58; RRS § 7485. Formerly RCW 87.44.020, part.]

Reviser's note: (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.560.

(2) "Show cause, as in this act mentioned" apparently refers to the show cause provided for in RCW 87.03.565.

Guardians, etc., when land excluded from district: RCW 87.03.690.

87.03.615 Adding lands to districts of two hundred thousand acres—Petition. Whenever five or a majority

of the holders of title to or evidence of title to any land susceptible of irrigation from the water supply and system of works of any irrigation district in this state, comprising within its boundaries two hundred thousand or more acres of land now existing or hereafter organized, desire to have such land included in said irrigation district, they may file a petition, in writing, with the board of directors thereof praying that such land be included in such district. [1939 c 150 § 1; RRS § 7485-1. Formerly RCW 87.44.100.]

87.03.620 Adding lands to districts of two hundred thousand acres—Time and place of hearing—Notice. Upon the filing of the petition, the board shall fix a time and place for the hearing of the same which shall not be less than thirty days and not more than forty-five days from the date of said filing; and the board shall cause a notice of such hearing to be published prior to said hearing in three consecutive weekly issues of the official newspaper of each county in which any of said land prayed to be included is situated. [1939 c 150 § 2; RRS § 7485-2. Formerly RCW 87.44.110.]

Official paper for publication: RCW 87.03.020.

87.03.625 Adding lands to districts of two hundred thousand acres—Contents of notice. Said notice shall state the filing of the petition, describe generally the lands petitioned to be included within the operation of the district and the prayer of the petition and shall notify all persons interested in or that may be affected by such inclusion to appear at the time and place named in the notice, and show cause in writing, if any they have, why such lands or any part of the same should not be included within operation of the district. Such notice shall have the name of the secretary and of the district either subscribed or subprinted thereto. [1939 c 150 § 3; RRS § 7485-3. Formerly RCW 87.44.120.]

87.03.630 Adding lands to districts of two hundred thousand acres—Hearing—Order including lands. The board of directors of the district shall meet at the time and place specified in the notice and shall have full authority to determine all matters pertaining to the petition, including the denial as well as the granting of said petition or any part thereof; and if it appears at said hearing, or at any adjournment thereof which may be had not to exceed in all thirty days, that the land or any portion thereof petitioned to be included within the district, is susceptible of irrigation from the water supply and system of works of the said district and will be benefited by such irrigation; and if at said hearing or at any adjournment thereof as aforesaid, not more than fifty percent of the holders of title or evidence of title to the lands described in the petition and proposed to be included file their objections in writing to the inclusion of such land within the time and as in *this act provided, the said board shall make and enter in the records of their proceedings an order including said land, or such portion thereof as in their judgment is susceptible of irrigation and will be benefited as aforesaid, within the operation of said district. [1939 c 150 § 4; RRS §

7485-4. Formerly RCW 87.44.130, part and 87.44.140, part.]

***Reviser's note:** "This act" is codified as RCW 87.03.615 through 87.03.640.

87.03.635 Adding lands to districts of two hundred thousand acres—Denial of petition. If at said hearing or at any adjournment thereof, the board of directors shall determine that said land is not susceptible of irrigation and will not be benefited as aforesaid by inclusion in the district, or if more than fifty percent of the holders of title to or evidence of title to the land described in the petition file their objections in writing within the time and as aforesaid, then the board of directors shall deny said petition and shall make and enter in the records of their proceedings an order to that effect. [1939 c 150 § 5; RRS § 7485-5. Formerly RCW 87.44.130, part.]

87.03.640 Adding lands to districts of two hundred thousand acres—Order filed—Effect. A certified copy of the order of the board of directors including any lands within the operation of the district under the provisions of *this act shall be filed with the county assessor and with the county auditor of each county in which any part of such included lands is situated, and from and after the date of such filing such land shall be subject to all the obligations and entitled to all the privileges of lands within the operation of the district. [1939 c 150 § 6; RRS § 7485-6. Formerly RCW 87.44.140, part.]

***Reviser's note:** "This act", see note following RCW 87.03.630.

87.03.645 Exclusion of lands from district—Effect. The boundaries of any irrigation district or consolidated irrigation district, now or hereafter organized under the provisions of this chapter, may be changed, and tracts of land which were included within the boundaries of such district, or former irrigation districts which were included within the boundaries of such consolidated district, at or after its organization under the provisions of this chapter, may be excluded therefrom in the manner herein prescribed; but neither such change of the boundaries of the district or consolidated district, nor such exclusion of lands from the district, nor such exclusion of a former district from a consolidated district, shall impair or affect its organization or the rights of the district in or to property, except that all property of a consolidated district, the title to which was derived from a former district by, and at the time of, the consolidation shall revert to and become the property of such former district when reestablished as herein provided; nor shall it affect, impair or discharge any contract, obligation, lien, or charge for or upon which such district or such consolidated district was or might become liable or chargeable had such change of its boundaries not been made, or had not any such land been excluded from such district, or any such former district been excluded from such consolidated district, unless the holders of such lien, obligation, charge or contract right chargeable against the district, or consolidated district

consent to such exclusion in the manner hereinafter provided in RCW 87.03.670 for the consent of the bondholders. [1921 c 129 § 35; 1915 c 179 § 23; 1889–90 p 698 § 60; RRS § 7486. Formerly RCW 87.44.150.]

87.03.650 Exclusion of lands from district—Petition to exclude lands—Contents. The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district, or fifty or a majority of the holders of title to lands constituting any portion of an irrigation district, or consolidated district as the case may be, for which lands similar grounds for exclusion may exist, or fifty or a majority of the holders of title to lands which constituted a former irrigation district included with a consolidated district, may file with the board of directors of such district, or of such consolidated district, as the case may be, a petition praying that such tracts, and any other tracts contiguous thereto, or such land which constituted such former district, may be excluded and taken from said district, or consolidated district, as the case may be, and in the latter case that such former district may be reestablished. The petition for the exclusion of tracts of land from a district shall describe the boundaries of the land which the petitioners desire to have excluded from the district, and also describe the land of such of said petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. The petition for the exclusion of a former district from a consolidated district shall give the corporate name and number of such former district and shall describe the lands of each of said petitioners by legal subdivision or lot and block numbers and name of city, town or addition of platted lands. Every such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. [1921 c 129 § 36; 1889–90 p 699 § 61; RRS § 7487. Formerly RCW 87.44.160, part.]

Acknowledgments: Chapter 64.08 RCW.

Property taxes—Listing of property: Chapter 84.40 RCW.

87.03.655 Exclusion of lands from district—Notice—Contents—Service. The secretary of the board of directors shall cause a notice of the filing of the petition to be published for at least two weeks in a newspaper of general circulation in the county where the office of the board of directors is situated, and if any portion of the territory to be excluded lies within another county or counties, then the notice shall be so published in a newspaper of general circulation within each of the counties. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands, or the name and number of the former district, mentioned in the petition, and the prayer of the petition; and it shall notify all persons interested in or that may be affected by the change of the boundaries of the district to appear at the office of the board at a time named in

the notice, and show cause in writing, if any they have, why the change of the boundaries of the district, as proposed in the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. [1985 c 469 § 89; 1921 c 129 § 37; 1889–90 p 699 § 62; RRS § 7488. Formerly RCW 87.44.170.]

Official paper for publication: RCW 87.03.020.

87.03.660 Exclusion of lands from district—Hearing—Assent. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district or consolidated district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, or the former district mentioned should not be excluded from the consolidated district, as the case may be, shall be deemed and taken as an assent by him to such exclusion, and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to such exclusion. [1921 c 129 § 38; 1889–90 p 700 § 63; RRS § 7489. Formerly RCW 87.44.180.]

87.03.665 Exclusion of lands from district—Order denying or granting petition. The board of directors, if they deem it not for the best interest of the district, or consolidated district, as the case may be, that the lands, or the former district, mentioned in the petition, or some portion thereof, should be excluded from said district, or consolidated district, shall order that said petition be denied; but if they deem it for the best interests of the district, or consolidated district, as the case may be, that the lands, or the former district, as the case may be, be excluded from the district, or consolidated district, and if no person interested in the district shows cause, in writing, why the prayer of the petition should not be granted, or if having shown cause withdraws the same, and also, if there be no outstanding bonds of the district, and no contract between the district and the United States, or the state of Washington, then the board may order that the lands mentioned in the petition, or some defined portion thereof, or the former district mentioned in the petition, be excluded from the district, or consolidated district, as the case may be, and the former district be reestablished. [1921 c 129 § 39; 1915 c 179 § 24; 1889–90 p 700 § 64; RRS § 7490. Formerly RCW 87.44.190.]

Board's powers and duties generally (contracts with state and United States): RCW 87.03.140.

87.03.670 Exclusion of lands from district—Assent of bondholders. If there be outstanding bonds of the district, or consolidated district, as the case may be, or if such district shall have entered into a contract with the

United States, or the state of Washington, then the board may adopt a resolution to the effect that the board deems it to the best interest of the district that the lands mentioned in the petition, or some portion thereof, or the former district mentioned in the petition, as the case may be, should be excluded from the district, or consolidated district, and the former district reestablished. The resolution shall describe such lands so that the boundaries can readily be traced, or shall give the corporate name and number of the former district. The holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the board may make an order by which the lands, or the former district, mentioned in the resolution may be excluded from the district, and in case contract has been made with the United States, or the state of Washington, the secretary of the interior, or the state reclamation board, or the director of conservation and development may assent to such change. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect, as evidence, as the acknowledgment of such conveyance. The assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board, and in the office of the county clerk in each county comprised within the district and must be recorded in the minutes of the board; and said minutes, or certified copy thereof, shall be admissible in evidence with the same effect as the said assent; but if such assent of the bondholders, and in case of contract with the United States, or the state of Washington, such assent of the secretary of the interior, or the state reclamation board or the director of conservation and development, be not filed, the board shall deny and dismiss said petition. [1921 c 129 § 40; 1915 c 179 § 25; 1889-90 p 701 § 65; RRS § 7491. Formerly RCW 87.44.200.]

Acknowledgments: Chapter 64.08 RCW.

Board's powers and duties generally (contracts with state and United States): RCW 87.03.140.

Certificate of acknowledgment—Evidence: RCW 64.08.050.

87.03.675 Exclusion of lands from district—Order for election—Notice—Conduct of election. If the assent aforesaid of the holders of said bonds be filed and entered of record as aforesaid, and if there be objections presented by any person showing cause as aforesaid, which have not been withdrawn, then the board may order an election to be held in each district to determine whether an order shall be made excluding said land from said district, or excluding said former district from said consolidated district, as the case may be, and such former district be reestablished, as mentioned in said resolution. The notice of such election shall describe the boundary of all lands, or shall give the corporate name and number of the former district, which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election, in a newspaper published within the county where the office of the board of directors is situated; and if any portion of such territory

to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of such counties. Such notice shall require the electors to cast ballots, which shall contain the words "For exclusion" and "Against exclusion", or words equivalent thereto. Such election shall be conducted in the manner prescribed in this chapter for the holding of special elections on the issuance of bonds. In every case where the petition is for the exclusion of a former district from a consolidated district the resolution of the board ordering an election shall provide for the holding of such election separately in the territory comprising such former district and in the territory comprising that portion of the consolidated district not included in such former district, and for canvassing and counting of the votes cast at such election separately. [1921 c 129 § 41; 1915 c 179 § 26; 1889-90 p 701 § 66; RRS § 7492. Formerly RCW 87.44.210.]

Special elections on the issuance of bonds: RCW 87.03.200.

87.03.680 Exclusion of lands from district—Procedure following election—Order of exclusion. If at any such election a majority of all the votes cast shall be against exclusion the board shall deny and dismiss said petition and proceed no further in said matter; but if in the case of a petition for the exclusion of lands from a district a majority of such votes be in favor of the exclusion of said lands from the district, the board shall thereupon order that the said lands mentioned in said resolution be excluded from the district; if in the case of a petition for the exclusion of a former district from a consolidated district, a majority of the votes cast in such former district shall be against exclusion, or a majority of the votes cast in the remaining portion of the consolidated district shall be against exclusion, the board shall deny and dismiss the petition and proceed no further in the matter; but if in the case of a petition for such exclusion of a former district a majority of the votes cast in such former district and a majority of the votes cast in the remaining portion of the consolidated district shall be in favor of the exclusion of such former district, the board shall thereupon order that the lands comprising such former district be excluded from the consolidated district and that such former district shall be and is reestablished as an irrigation district created and established under the provision of this chapter and that the title to all property formerly belonging to, and all property within the boundaries of said former district, shall be and is vested in such reestablished district, and shall call an election to be held in such reestablished district for the election of a board of directors thereof, and direct the publication of notices of such election in the manner provided in this chapter for the publication of notice of special elections. The board entering such order shall continue to administer the affairs of such reestablished district until the directors elected at such election shall have qualified.

The said order excluding land from a district shall describe the boundaries of the lands excluded, should the exclusion change the boundaries of the district, and in

case of the exclusion of a former district from a consolidated district, shall describe the boundaries of the reestablished district and the boundaries of the district remaining; and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary. [1961 c 18 § 4. Prior: 1947 c 241 § 2; 1921 c 129 § 42; 1889-90 p 702 § 67; Rem. Supp. 1947 § 7482 (RRS § 7493). Formerly RCW 87.44.220.]

87.03.685 Exclusion of lands from district—Orders to be recorded—Effect. Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof, certified by the president and the secretary of the board, shall be filed for record in the offices of the county auditor and the county assessor of each county within which are situated any of the lands of the district, and thereupon said district, and said consolidated district and said reestablished district, if any, shall each be and remain an irrigation district as fully, as to every intent and purpose, as it would be had no change been made in the boundaries thereof, or had the lands excluded therefrom never constituted a portion thereof. [1921 c 129 § 43; 1889-90 p 702 § 68; RRS § 7494. Formerly RCW 87.44.230.]

87.03.690 Exclusion of lands from district—Guardian, executor or administrator may sign and acknowledge. A guardian, and executor or an administrator of an estate who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed. [1889-90 p 703 § 71; RRS § 7496. Formerly RCW 87.44.160, part.]

Reviser's note: (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.650.

(2) "Show cause, as in this act provided", apparently refers to the show cause provided for in RCW 87.03.655.

Guardians, etc., when land added to district: RCW 87.03.610.

87.03.695 Exclusion of lands from district—Refunds—Cancellation of assessments. In case of the exclusion of any lands under the provisions of this act, the board of directors shall determine what refund, if any, shall be made to any person or persons who have paid any assessments to such district on any lands so excluded, but such refund, if any, shall be on a basis equitable alike to lands remaining in the district and lands excluded therefrom. Such payment shall be made in the manner as other claims against the district, and from such fund or funds as the board of directors may designate, and which may be legally applied to such payments. The board may, in its discretion, determine what portion, if any, of the assessments remaining unpaid shall be canceled. Said cancellation, if any, shall be accomplished by an order entered upon the minutes of the board and certified to the office of the county treasurer.

Upon the filing of such certified order, said assessments, or any portion thereof, canceled by said order shall be marked "Canceled" upon the treasurer's records. The lien of such portion of said assessments, if any, as the board shall refuse to cancel, shall continue against the lands excluded, and the district shall retain all of its rights to such assessments or portions thereof as if said lands had not been excluded. [1921 c 129 § 44; 1913 c 165 § 22; 1889-90 p 703 § 72; RRS § 7497. Formerly RCW 87.44.240.]

87.03.700 Connecting system to lower drainage district—Procedure. When an irrigation district desires to connect its system of drainage with that of a lower drainage district or districts, it shall make the lower district or districts a party to the proceedings to construct its system, and allege in its petition that the connection is needed to afford a proper outlet and that the outlet is sufficient for both districts. If the lower system or systems must be improved to support the additional burden, the petition shall be accompanied by plans and specifications therefor. The owners of all lands in the lower district or districts affected thereby and also persons having an interest therein shall be made parties to the action and assessment for damages shall be the same as is provided by law for the establishment of the drainage system in the irrigation district. [1955 c 367 § 2. Formerly RCW 87.08.250.]

87.03.705 Connecting system to lower drainage district—Negative finding by jury or court. The jury, or the court if jury be waived, shall first determine whether the lower drainage system or systems when so improved will afford a sufficient drainage and outlet for both the drainage district and irrigation district, and if it finds that it will not, the finding shall terminate the proceedings so far as the connecting with the lower drainage district or districts is concerned and the costs shall be paid as in other suits: *Provided*, That the irrigation district may maintain said suit for the purpose of acquiring the necessary rights of way from the lower drainage district or districts and the landowners in said lower district or districts that will not interfere with the operation and maintenance of the drainage system in the lower district or districts. [1955 c 367 § 3. Formerly RCW 87.08.260.]

87.03.710 Connecting system to lower drainage district—Affirmative finding by jury or court—Assessments. If the jury, or the court if jury be waived, finds the outlet and drainage sufficient it shall assess the damages sustained by the lands in the lower drainage district or districts by reason of the improvement, together with awards for damaging and taking lands for rights of way required, which shall be paid by the irrigation district in the same manner as such payments are made in establishing the system in the irrigation district, and the cost of improving the lower system or systems to the extent the improvement benefits lands in the irrigation district shall be assessed to the lands in the irrigation district as other costs of drainage improvement are assessed. [1955 c 367 § 4. Formerly RCW 87.08.270.]

87.03.715 Connecting system to lower drainage district—Increased maintenance costs. The lower district or districts may require the jury or court to determine any increased cost to it in annual maintenance of its system as improved, and judgment shall be rendered against the irrigation district in favor of the lower drainage district or districts for any amount so found, and it shall be paid annually as the cost of construction is paid, and the amount so paid shall be used by the lower drainage district or districts for maintenance. [1955 c 367 § 5. Formerly RCW 87.08.280.]

87.03.720 Merger of district with drainage, joint drainage, consolidated drainage improvement, or sewer district—Power to assent. The board of directors of an irrigation district shall, after being notified by the legislative authority of the county or counties within which the irrigation district lies of the filing of the petition therefor, have the power to assent to the proposed merger with the irrigation district of that portion of a drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or sewer district within its boundaries at a hearing duly called by the board to consider the proposed merger if sufficient objections thereto have not been presented, as hereinafter provided. [1977 ex.s. c 208 § 1; 1957 c 94 § 10. Formerly RCW 87.01.240.]

Merger of drainage improvement district with irrigation district: RCW 85.08.830 through 85.08.890.

87.03.725 Merger of district with drainage, joint drainage, consolidated drainage improvement, or sewer district—Notice—Contents—Publication—Show cause against merger. The secretary of the board of directors shall cause a notice of the proposed merger to be posted and published in the same manner and for the same time as notice of a special election for the issue of bonds. The notice shall state that a petition has been filed with the legislative authority of the county or counties within which the irrigation districts lies by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district or by the board of commissioners of a sewer district requesting that the drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or sewer district be merged with the irrigation district or irrigation districts, the names of the petitioners and the prayer thereof, and it shall notify all persons interested in the irrigation district to appear at the office of the board at the time named in the notice, and show cause in writing why the proposed merger should not take place. The time to show cause shall be the regular meeting of the board of directors of the irrigation district next after the expiration of the time for the publication of the notice. [1977 ex.s. c 208 § 2; 1957 c 94 § 11. Formerly RCW 87.01.250.]

Official paper for publication: RCW 87.03.020.

87.03.730 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Hearing—Failure to show cause deemed assent. At the time of hearing, or at such other time to which the hearing may be adjourned, the board of directors of the irrigation district shall hear the proposal of merger and any objections thereto. Failure to show cause shall be deemed as assent to the proposed merger. [1957 c 94 § 12. Formerly RCW 87.01.260.]

87.03.735 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Assent, refusal to assent—Effect of show cause against merger. The board of directors of the irrigation district, if it deems it not for the best interest of the irrigation district that the proposed merger take place, shall enter an order refusing to assent to the merger. But, if it deems it to be to the best interest of the irrigation district that the merger take place and, if twenty-five or more persons interested in the irrigation district have not shown cause in writing why the proposed merger should not take place, or, if having shown cause, withdraw the same, the board of directors of the irrigation district may enter an order assenting to the proposed merger.

If twenty-five or more persons interested in the irrigation district shall show cause, as aforesaid, why the proposed merger should not take place and shall not withdraw the same, and if the irrigation district board nevertheless deems it for the best interest of the irrigation district that the proposed merger take place, the board shall adopt a resolution to that effect. [1957 c 94 § 13. Formerly RCW 87.01.270.]

87.03.740 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Election. Upon the adoption of the resolution, the board shall order an election held within the irrigation district on the question of the proposed merger and shall fix the time thereof and cause notice to be published. The notice shall be given and the election conducted in the manner as for special elections on a bond issue of the district. The ballots shall contain the words "Merger, Yes" and "Merger, No" or words equivalent thereto. [1957 c 94 § 14. Formerly RCW 87.01.280.]

Bonds—Election: RCW 87.03.200.

87.03.745 Merger of district with drainage, joint drainage, or consolidated drainage improvement district—Order of assent or refusal—Filing. If a majority of the votes cast at the election are against the merger, the irrigation district board shall enter an order refusing to assent to the merger. If a majority of the votes cast favor the merger, the board shall enter an order assenting to the proposed merger. A copy of the order certified by the president and secretary of the board shall be filed with the board of county commissioners or, in case the merger involves a joint drainage improvement district, with the boards of county commissioners of the counties in which the joint drainage improvement

district is situated. [1957 c 94 § 15. Formerly RCW 87.01.290.]

87.03.750 Exclusion of nonirrigable land when state holds all outstanding bonds—Resolution. Whenever any irrigation district organized and existing under the laws of this state, shall have entered into a contract, or contracts, with the department of conservation and development of the state of Washington, for the sale to and purchase by the department of an entire authorized issue of the bonds of the district, for the purpose of procuring funds for district purposes, including the construction of an irrigation system for the district, and the department of conservation and development has advanced, under such contract, or contracts, funds for such purposes, and such funds have been expended for the purposes advanced, and there are no outstanding bonds of the district other than those which the district has contracted to sell the department of conservation and development, and it shall appear to the satisfaction of the board of directors of the district that the irrigation system, for the construction of which such funds were advanced and expended, will not furnish sufficient water for the successful irrigation of all of the lands within the district and that the district as constituted will be unable by assessments upon the lands of the district, as provided by law, to collect sufficient funds to meet the interest payments upon and pay the bonds at maturity, the board of directors of the district shall have the power by unanimous resolution to adopt a comprehensive proposed plan for reducing the boundaries of the district, excluding therefrom such portions of the lands of the district as in the judgment of the board cannot be furnished with sufficient water for successful irrigation, and refunding to the owners of such excluded lands, respectively, any moneys paid for assessments levied by the district upon the lands excluded, and to release any such excluded lands from all unpaid assessments levied by the district, which resolution shall give the boundaries to which it is proposed to reduce the district and the description of the lands it is proposed to exclude from the district by government subdivisions, or metes and bounds. [1925 ex.s. c 138 § 1; RRS § 7505-1. Formerly RCW 87.44.250.]

87.03.755 Exclusion of nonirrigable land when state holds all outstanding bonds—Notice of hearing—Contents. Upon the adoption of the resolution as provided in RCW 87.03.750, the board of directors of the district shall cause to be served upon the director of the department of ecology, and to be published once a week for four successive weeks in a newspaper of general circulation in the county in which the district is situated a notice that at the time and place fixed in the notice, the board will hold a public hearing for the further consideration of the plan proposed, which notice shall set forth a copy of the resolution adopted by the board, and state that at the hearing the board will receive and consider any objections to the proposed plan and/or suggestions for modification thereof, of any person interested, and at the conclusion of the hearing, or the final adjournment thereof, the board will proceed by resolution to adopt the

plan proposed, or the modification of the plan as may be determined by the board, and reduce the boundaries of the district and exclude therefrom such lands as cannot be furnished with sufficient water for successful irrigation, and provide for the repayment to the owners of the excluded lands of any assessments paid thereon, and the cancellation of all unpaid assessments against excluded lands. [1985 c 469 § 90; 1925 ex.s. c 138 § 2; RRS § 7505-2. Formerly RCW 87.44.260.]

87.03.760 Exclusion of nonirrigable land when state holds all outstanding bonds—Adoption of resolution—Appeal. At the conclusion, or final adjournment, of the hearing provided for in RCW 87.03.755, the board of directors of the district shall have the power, by unanimous resolution to adopt the proposed plan, or such modification thereof as may be determined by the board, and reduce the boundaries of the district to such area as, in the judgment of the board, can be furnished with sufficient water for successful irrigation by the irrigation system of the district, and to exclude from the district all lands lying outside of such reduced boundaries, and provide for the repayment to the owners of any such excluded lands, respectively, of any sums paid for assessments levied by the district, and to cancel all unpaid assessments levied by the district against the lands excluded and release such lands from further liability therefor. Any person interested and feeling himself aggrieved by the adoption of such final resolution reducing the boundaries of the district and excluding lands therefrom, shall have a right of appeal from the action of the board to the superior court of the county in which the district is situated, which appeal may be taken in the manner provided by law for appeals from justices' courts, and if upon the hearing of such appeal it shall be determined by the court that the irrigation system of the district will not furnish sufficient water for the successful irrigation of the lands included within the reduced boundaries of the district, or that any lands have been excluded from the district unnecessarily, arbitrarily, capriciously or fraudulently or without substantial reason for such exclusion, the court shall enter a decree canceling and setting aside the proceedings of the board of directors, otherwise the court shall enter a decree confirming the action of the board. Any party to the proceedings on appeal in the superior court, feeling himself aggrieved by the decree of the superior court confirming the action of the board of directors of the district reducing the boundaries of the district and excluding lands therefrom, shall have the right of appeal therefrom to the supreme court or the court of appeals of the state of Washington within thirty days after the entry of the decree of the superior court in the manner provided by law. If, at the expiration of thirty days from the entry of the final resolution of the board of directors of the district reducing the boundaries of the district and excluding lands therefrom, no appeal has been taken to the superior court of the county in which the district is situated, or if, after hearing upon appeal the superior court shall confirm the action of the district, and at the expiration of thirty days from the entry of such decree,

no appeal has been taken to the supreme court or the court of appeals, the boundaries of the district shall thereafter be in accordance with the resolution of the board reducing the boundaries, and all lands excluded from the district by such resolution shall be relieved from all further liability for any indebtedness of the district or any unpaid assessments theretofore levied against such lands, and the owners of excluded lands, upon which assessments have been paid, shall be entitled to warrants of the district for all sums paid by reason of such assessments, payable from a special fund created for that purpose, for which levies shall be made upon the lands remaining in the district, as the board of directors may provide. [1971 c 81 § 171; 1925 ex.s. c 138 § 3; RRS § 7505-3. Formerly RCW 87.44.270.]

District courts—Civil procedure—Appeals: Chapter 12.36 RCW.

87.03.765 Exclusion of nonirrigable land when state holds all outstanding bonds—Indebtedness may be reduced. Whenever it shall appear, to the satisfaction of the director of ecology, that the irrigation system of any irrigation district, to which the department of ecology of the state of Washington under a contract with the district for the purchase of its bonds, has advanced funds for the purpose of constructing an irrigation system for the district, has been found incapable of furnishing sufficient water for the successful irrigation of all of the lands of such district, and that the board of directors of such district has reduced the boundaries thereof and excluded from the district, as provided in RCW 87.03.750 through 87.03.760, sufficient lands to render such irrigation system adequate for the successful irrigation of the lands of the district, and that more than thirty days have elapsed since the adoption of the resolution by the board of directors reducing the boundaries of the district and excluding lands therefrom, and no appeal has been taken from the action of the board, or that the action of the board has been confirmed by the superior court of the county in which the district is situated and no appeal has been taken to the supreme court or the court of appeals, or that upon appeal to the supreme court or the court of appeals the action of the board of directors of the district has been confirmed, the director of ecology shall be and he is hereby authorized to cancel and reduce the obligation of the district to the department of ecology, for the repayment of moneys advanced for the construction of an irrigation system for the district, to such amount as, in his judgment, the district will be able to pay from revenues derived from assessments upon the remaining lands of the district, and to accept, in payment of the balance of the obligation of the district, the authorized bonds of the district, in numerical order beginning with the lowest number, on the basis of the percentage of the face value thereof fixed in contracts between the district and the department of ecology, in an amount equal to said balance of the obligation of the district, in full and complete satisfaction of all claims of the department of ecology against the district. [1971 c 81 § 172; 1925 ex.s. c 138 § 4; RRS § 7505-4. Formerly RCW 87.44.280.]

87.03.770 Exclusion of nonirrigable land when state holds all outstanding bonds—Reconveyance of excluded land formerly foreclosed to district. Whenever the boundaries of any irrigation district have been reduced and lands excluded from such district, as provided in *this act, the directors of such district shall be authorized and directed to execute and deliver to the owners, respectively, of any lands excluded from the district, which have been deeded to the district for the nonpayment of assessments theretofore levied, deeds of reconveyance and quit claim of all right, title and interest of the district in such lands, respectively. [1925 ex.s. c 138 § 5; RRS § 7505-5. Formerly RCW 87.44.290.]

*Reviser's note: "This act" is codified as RCW 87.03.750 through 87.03.770.

87.03.775 Map of district. Said board of directors shall cause a map to be made of the irrigation districts showing each forty acres, subdivision or fraction thereof, and place the same on file in their office. [1895 c 165 § 28; RRS § 7495. Formerly RCW 87.08.120.]

Surveys, maps and plans to be prepared: RCW 87.03.165 through 87.03.170.

87.03.780 Proceedings for judicial confirmation—Authorization. The board of directors of an irrigation district, now or hereafter organized under the provisions of this chapter, may commence a special proceeding in and by which the proceedings for organizing such district or the proceedings of said board and of said district, providing for and authorizing the issue and sale of the bonds or refunding bonds of said district whether said bonds or refunding bonds or any of them have or have not then been sold or any contract entered or proposed to be entered into by the district, or any contract made or entered into, or to be made or entered into, for the payment of moneys to the United States or the state of Washington in connection with which bonds be not deposited with the United States or the state of Washington as provided in RCW 87.03.140, may be judicially examined, approved and confirmed.

There may be combined with the proceeding for the confirmation of the organization and formation of said district, either of the other confirmation proceedings above mentioned. [1931 c 60 § 6; 1921 c 129 § 45; 1917 c 162 § 17; 1915 c 179 § 27; 1889-90 p 703 § 73; RRS § 7499. Formerly RCW 87.08.190.]

Refunding bonds, 1929 act—Judicial confirmation: RCW 87.22.280.

87.03.785 Proceedings for judicial confirmation—Petition—Contents. The board of directors of the irrigation district shall file in the superior court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts, showing the proceedings had for the organization of said district or the proceedings had for the issue and sale of said bonds or for the issue and sale of said refunding bonds, or for the authorization of contract with

the United States, or other contract described in said petition; and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district, or the election of said first board of directors. [1931 c 60 § 7; 1917 c 162 § 18; 1915 c 179 § 28; 1889–90 p 703 § 74; RRS § 7500. Formerly RCW 87.08.200.]

87.03.790 Proceedings for judicial confirmation—
Notice of hearing. The court shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time that a notice of a special election provided for by this chapter to determine whether the bonds of said district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds or refunding bonds or for the authorization of contract with the United States, or the state of Washington, or any other contract, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of irrigation district (giving its name) praying that the proceedings for the organization of said district or the proceedings for the issue and sale of the bonds of said district or for the authorization of contract with the United States, or the state of Washington, or other contracts, may be examined, approved, and confirmed by said court. [1931 c 60 § 8; 1921 c 129 § 46; 1917 c 162 § 19; 1915 c 179 § 29; 1889–90 p 704 § 75; RRS § 7501. Formerly RCW 87.08.210.]

Notice of a special election on bonds: RCW 87.03.200.
Official paper for publication: RCW 87.03.020.

87.03.795 Proceedings for judicial confirmation—
Demurrer or answer—Procedure. Any person interested in said district or in the issue or sale of said bonds in the issue or sale of refunding bonds or in the making of a contract with the United States or any contract referred to in said petition may demur to or answer said petition. The statutes of this state respecting the demurrer, and the answer to a verified complaint, shall be applicable to a demurrer and answer to said petition. The person so demurring to or answering said petition shall be the defendant to said special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for the purposes of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the statutes of this state, which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding herein provided for. A motion for a new trial must be made upon the

minutes of the court. The order granting a new trial must specify the issue to be reexamined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [1931 c 60 § 9; 1915 c 179 § 30; 1889–90 p 704 § 76; RRS § 7502. Formerly RCW 87.08.220.]

Rules of court: Cf. Superior Court Civil Rules.
Civil procedure: Title 4 RCW.

87.03.800 Proceedings for judicial confirmation—
Jurisdiction of court—Order—Costs. Upon the hearing of such special proceedings, the court shall have full power and jurisdiction to examine and determine the legality and validity of and approve and confirm each and all of the proceedings for the organization of said district under the provisions of this chapter from and including the petition for the organization of the district, and all other proceedings which may affect the legality of the formation of said district or the legality or validity of said bonds, or refunding bonds, and the order for the sale, and the sale thereof, and all proceedings which may affect the authorization or validity of the contract with the United States, or the state of Washington, or other contract. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings, in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of said petition has been duly given and published for the time and in the manner in this chapter prescribed. The costs of the special proceedings may be allowed and apportioned between all of the parties, in the discretion of the court. [1931 c 60 § 10; 1921 c 129 § 47; 1917 c 162 § 20; 1915 c 179 § 31; 1889–90 p 705 § 77; RRS § 7503. Formerly RCW 87.08.230.]

Notice of special election on bonds: RCW 87.03.200.

87.03.805 Proceedings for judicial confirmation—
Appeal. An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within thirty days after the entry of said order or said judgment. [1915 c 179 § 32; 1889–90 p 705 § 78; RRS § 7504. Formerly RCW 87.08.240.]

87.03.810 Lump sum payment to district for irrigable lands acquired for highway purposes. Whenever lands situated in an irrigation district are acquired by the department of transportation, and the lands, at the time of their acquisition by the department of transportation, were irrigable and were being served or were capable of being served by facilities of the district to the same extent and in the same manner as lands of like character held under private ownership were served, the department of transportation, as part of the cost and expense of the acquisition of rights of way and with funds available for the acquisition and at the time of the acquisition, shall make a lump sum payment to the irrigation district in an amount that is:

(1) Sufficient to pay the pro rata share of the district's bonded indebtedness, if any, and the pro rata share of the district's contract indebtedness to the United States or to the state of Washington, if any, allocable to the lands, plus interest on the pro rata share if the indebtedness is not callable in advance of maturity; and

(2) Further, sufficient to pay any deferred installments of local improvement district assessments against the lands, if any; and

(3) Further, sufficient to produce, if invested at an annual rate of interest equivalent to that set forth in current tables issued by the state insurance commissioner, a sum of money equal to the annual increase in operation and maintenance costs against remaining lands in the district resulting from the severance from the district of the lands thus acquired by the department of transportation. For the purposes of determining the amount of the lump sum payment, the annual maintenance and operation assessment of the district shall be considered to be the average for the ten years, or so many years as the district has assessment experience if less than ten years, preceding the date of acquisition. [1984 c 7 § 380; 1959 c 303 § 1. Formerly RCW 87.01.300.]

Severability—1984 c 7: See note following RCW 47.01.141.

87.03.815 Lump sum payment to district for irrigable lands acquired for highway purposes—Order relieving further district assessments. Upon the department of transportation making the lump sum payment to the district under RCW 87.03.810, the district shall make and enter an order relieving the lands from further district assessments for the delivery of water to the lands. [1984 c 7 § 381; 1959 c 303 § 2. Formerly RCW 87.01.310.]

Severability—1984 c 7: See note following RCW 47.01.141.

87.03.820 Disposal of real property—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right of way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining

lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require.

Any sale or other disposal of real property pursuant to chapters 87.52, 87.53, and 87.56 RCW shall be made in accordance with the requirements of this section. [1973 c 150 § 1; 1971 ex.s. c 125 § 2.]

87.03.825 Hydroelectric resources—Development—Legislative findings. The legislature finds that a significant potential exists for the development of cost-effective renewable hydroelectric resources by irrigation districts, cities, towns, and public utility districts and further finds that it is in the best interests of the state and its citizens for such entities to develop that hydroelectric generating resource cooperatively whenever possible through the use of separate legal authorities. The legislature also finds that the development of such hydroelectric resources will be beneficial in meeting the present and future energy needs of the citizens of the state, will further a state purpose and policy, and will be in the public interest. [1983 c 47 § 1.]

Severability—1983 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 47 § 7.]

87.03.828 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts—Powers. One or more irrigation districts and any combination of cities, towns, or public utility districts may create a separate legal authority to construct, finance, acquire, own, operate, and maintain hydroelectric facilities including, but not limited to, dams, canals, plants, transmission lines, other power equipment and the necessary property and property rights therefor, located within or outside the boundaries of the entities creating the authority, for the purpose of utilizing for the generation of electricity water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, wasteways, and drainage water facilities which serve or may in the future serve irrigation districts, and to sell by contract on such terms and conditions as deemed appropriate by the legislative body of the authority the electric power and energy created by or generated at such hydroelectric facilities to municipal or quasi municipal corporations or cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, or irrigation districts. Any authority so created shall have the same powers and only those powers granted to irrigation districts by chapter 185, Laws of 1979 ex. sess. and has

such additional powers relating to its organization, right to contract in its own name, and general ability to exist and function as a separate legal authority as deemed appropriate by the entities creating it. The authority shall be created and organized by contract in the manner described in chapter 39.34 RCW and shall be a separate legal entity capable of exercising in its own name the powers granted it. No provision of chapter 39.34 RCW or any other provision of law may be interpreted to require the entities creating the authority to submit the contract creating the authority to any state, county, or municipal officer, entity, agency, or board for approval or disapproval. [1983 c 47 § 2.]

Severability—1983 c 47: See note following RCW 87.03.825.

87.03.831 Hydroelectric resources—Separate legal authority—Procedures for membership and for construction and acquisition of facilities. Cities, towns, and public utility districts not engaged in the generation, transmission, or distribution of electricity on April 19, 1983, may be members of a separate legal authority created under the provisions of RCW 87.03.828 without the necessity of obtaining prior approval of their voters. However, no such city, town, or public utility district member of such a separate legal authority may construct or acquire facilities for the generation, transmission, or distribution of electricity independently of the separate legal authority without complying with the election requirements applicable to each individual entity. [1983 c 47 § 4.]

Severability—1983 c 47: See note following RCW 87.03.825.

87.03.834 Hydroelectric resources—Separate legal authority—Voter ratification of actions. After demand made by a majority of the authority's members, the actions of an authority shall become subject to ratification and approval by the voters of its members in accordance with procedures agreed to by its members. Every contract establishing an authority shall provide appropriate procedures for ratification and approval of actions taken by the authority by the voters of its members. [1983 c 47 § 5.]

Severability—1983 c 47: See note following RCW 87.03.825.

87.03.837 Hydroelectric resources—Separate legal authority—Repayment of indebtedness—Powers. A separate legal authority shall only have power to incur indebtedness that is repayable from rates, tolls, charges, or contract payments for services or electricity provided by the authority and to pledge such revenues for the payment and retirement of indebtedness issued for the construction or acquisition of hydroelectric facilities. An authority shall not have power to levy taxes or to impose assessments for the payment of obligations of the authority. Every bond or other evidence of indebtedness issued by an authority shall provide (1) that repayment shall be limited solely to the revenues of the authority, and (2) that no member of the authority shall be obligated to repay directly or indirectly any obligation of the authority except to the extent of fair value for services

actually received from the authority. No member may pledge its revenues to support the issuance of revenue bonds or other indebtedness of an authority. This section shall not be construed to prohibit members of an authority from paying the necessary expenses of organizing and administering the authority and of studies performed, applications prepared, and consultants retained with regard to projects the authority is studying, developing, constructing, or operating. [1983 c 47 § 6.]

Severability—1983 c 47: See note following RCW 87.03.825.

87.03.840 Chapter supplementary—When. This chapter supplements and neither restricts nor limits any powers which a city, town, public utility district, or irrigation district might otherwise have under any laws of this state, except that no such authority created by RCW 87.03.828 and no city, town, or public utility district member of an authority may condemn for the benefit of the authority any plant, works, dam, facility, right, or property owned by any city, town, irrigation district, public utility district, or electrical company subject to the jurisdiction of the utilities and transportation commission. [1983 c 47 § 3.]

Severability—1983 c 47: See note following RCW 87.03.825.

87.03.900 Construction—1913 c 165. All irrigation districts in the state of Washington, and all proceedings had for the organization of any irrigation district, and all proceedings now pending in or relating to any irrigation district, shall be governed and controlled by the terms of this act, and this act shall not be construed as abridging or abrogating any of the rights or privileges of any irrigation district now organized, or being organized, and any contract, obligation, lien or charge, or bonds of any district, which may have been made, incurred, authorized or issued, prior to the taking effect of this act shall not be abridged or impaired by the terms of this act, but this act shall be construed as being a continuation of, and in aid of the previously existing laws relating to irrigation districts, except as to the sections specially repealed; and if in any instance relating to an existing district or any of its proceedings, the term of this amendatory act shall not be legally applicable, the district may proceed, and any contract, obligation, lien or charge against it may be enforced, under the terms and provisions of the law relating to irrigation districts in force and in effect prior to the taking effect of this act. [1913 c 165 § 23.]

87.03.905 Severability—1921 c 129. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1921 c 129 § 49.]

87.03.910 Severability—1923 c 138. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or

part thereof not adjudged to be invalid or unconstitutional. [1923 c 138 § 14.]

87.03.915 Severability—1935 c 128. In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. [1935 c 128 § 3.]

Chapter 87.04 DIRECTOR DIVISIONS

Sections

87.04.010	Divisions of certain districts required—Number— Directors—Who are electors.
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87.04.900	Chapter supplemental to other laws—General repealer.
87.04.910	Severability—1939 c 13.

87.04.010 Divisions of certain districts required—Number—Directors—Who are electors. An irrigation district comprising two hundred thousand or more acres, or irrigation districts comprising less than two hundred thousand acres which have followed the optional procedure specified in *this amendatory act, shall be divided into divisions of as nearly equal area as practical, consistent with being fair and equitable to the electors of the district. The number of divisions shall be the same as the number of directors, which shall be numbered first, second, third, etc. One director, who shall be an elector of the division, shall be elected for each division of the district by the electors of his division. A district elector shall be considered an elector of the division in which he holds title to or evidence of title to land. An elector holding title to or evidence of title to land in more than one division shall be considered an elector of the division nearest his place of residence. [1961 c 192 § 1; 1939 c 13 § 1; RRS § 7505–5a.]

*Reviser's note: The language "this amendatory act" refers to 1961 c 192 codified as RCW 87.04.010 through 87.04.900, 87.03.045, 87.03.080, 87.03.081 and 87.03.082.

Directors—Election, terms, etc.: RCW 87.03.080 through 87.03.082.
Organization of board, meetings, etc.: RCW 87.03.115.
Qualifications of voters and directors: RCW 87.03.045.

87.04.020 Director vacancies, how filled. Vacancies in the representation of director divisions on the board of directors of the irrigation district shall be filled by appointment of an elector of the division concerned, in the

same manner and for the same time as provided by law for the filling of vacancies on the board of directors of irrigation districts generally. [1961 c 192 § 2; 1939 c 13 § 2; RRS § 7505–5b.]

Directors—Vacancies, how filled: RCW 87.03.081.

87.04.030 New district to be divided by county commissioners—Objections, denial, election. When a new irrigation district comprising more than two hundred thousand acres has been authorized, pursuant to law, the board of county commissioners shall, within thirty days from the canvassing of the returns, divide the district into director divisions equal to the number of directors, and in the resolution organizing the district, they shall include an order designating the director divisions and describing the boundaries thereof. When a petition for the formation of a new irrigation district comprising less than two hundred thousand acres has been filed pursuant to law and said petition includes a request that the district be divided into director divisions, the board of county commissioners shall divide the district into director divisions as provided in this section unless objections to director divisions are made at the hearing held pursuant to RCW 87.03.020; and in the event objections to director divisions are made and not withdrawn, the board of county commissioners may deny the request for director divisions or if it determines that it is to the best interests of the district that director divisions be established, it may, in its order calling an election for organization of the district, include a separate proposition on the question of director divisions; and if a majority of the votes cast on said proposition are in favor of director divisions, then the resolution organizing the district shall include an order designating the director divisions and describing the boundaries thereof. [1961 c 192 § 3; 1939 c 13 § 3; RRS § 7505–5c.]

87.04.040 Petition to divide or redivide. Proceedings to divide or redivide a district comprising less than two hundred thousand acres into director divisions, or to redivide the director divisions heretofore established for districts comprising more than two hundred thousand acres, may be initiated by a petition filed with the county commissioners of the county in which the principal office of the district is situated. The petition shall designate the name of the district and pray that it be divided into director divisions, or that existing director divisions be redivided, and shall be signed by at least two-thirds of the directors of the district or in lieu thereof by at least twenty electors of the district. A petition to divide or redivide a district shall not be filed more than once in each five-year period except for redivisions necessitated by reason of a change in the total number of directors of the district. [1961 c 192 § 4; 1939 c 13 § 4; RRS § 7505–5d.]

87.04.050 Redivision when number of directors changed or new lands included. If the number of directors is changed for a district which is divided into director divisions or new lands outside of existing director divisions are included into a district but cannot be added

to director divisions as provided in RCW 87.04.055 due to geographic limitations, a petition for redivision or addition shall be filed with the board of county commissioners by the directors of the district and all proceedings thereon shall be conducted in the manner as provided in RCW 87.04.060 and 87.04.070: *Provided*, That even if objections are filed at the hearing on said petition, no election shall be held but the board of county commissioners shall make such division or addition that they determine to be fair and equitable to the electors of the district. [1967 c 205 § 1; 1961 c 192 § 5; 1939 c 13 § 7; RRS § 7505–5g.]

87.04.055 Procedure for adding land to director divisions when new land included in district. When land located outside existing director divisions is included in an irrigation district such land shall thereby be added to the nearest director division, except that where added lands are adjacent to two or more director divisions, the common boundary lines between the divisions shall be extended in a straight line so as to include the new lands in such divisions: *Provided*, That where the provisions of this section cannot be applied due to geographic limitations, the procedures provided for in RCW 87.04.050 shall apply. [1967 c 205 § 2.]

87.04.060 Time for hearing on petition—Notice, contents. Upon the filing of the petition the board of county commissioners shall fix a time and place for hearing thereon, which shall be not less than thirty days nor more than forty–five days from the date of filing, and shall cause notice thereof, stating the time, place, and general purpose of the hearing, to be published in a newspaper of general circulation in each county in which any of the lands of the district are situated, in at least three consecutive weekly issues; if there is no such newspaper published in a county, then in a newspaper of general circulation therein, designated by the county commissioner. The notice shall state the filing of the petition and its prayer, but need not describe with particularity the boundaries of the divisions recommended in the petition, and shall notify all electors of the district to appear at the time and place named in the notice to show cause, if any they have, why the district should not be divided or redivided into director divisions. [1961 c 192 § 6; 1939 c 13 § 5; RRS § 7505–5e.]

Official paper for publication: RCW 87.03.020.

87.04.070 Hearing—Order of denial or rejection—Election to divide or redivide. At the hearing or adjournments thereof, which shall not be for more than sixty days in all, the board of county commissioners shall consider the petition and shall hear electors of the district for or against the division or redivision of director divisions and recommendations for the manner in which division should be made. If the board deems it against the best interests of the district to divide the district into director divisions or to redivide existing divisions, it shall order the petition rejected, but if it deems it for the best interests of the district that the petition be granted, and if no elector of the district files cause in writing at said

hearing why the petition should not be granted, or if having filed said cause in writing withdraws the same, the board shall enter an order dividing or redividing the district into the same number of director divisions as there are directors of the district, and designating the divisions and describing the boundaries thereof. The division to be made shall be such as the commissioners consider fair and equitable to the electors of the district. A copy of the commissioners' order shall be filed for record, without charge, with the auditor of each county in which any part of the district is situated, and thereafter the directors shall be elected or appointed as provided in this chapter. If any elector shall appear in person at said hearing and shall file cause in writing as aforesaid why the petition should not be granted and shall not withdraw the same, and if the board nevertheless deems it for the best interests of the district that the petition be granted, the board shall adopt a resolution to that effect and shall order an election held within the district on whether the district should be divided into director divisions or its existing director divisions be redivided, and shall fix the time thereof and cause notice to be published. The notice shall be given and the election conducted in the manner as for special elections on a bond issue of the district. The notice shall state the general plan of division or redivision but need not describe with particularity the boundaries of the proposed division or redivision. Such boundaries shall be described on the ballot. If the majority of votes cast at the election are in favor of dividing or redividing the district into director divisions, the board of county commissioners shall enter an order dividing or redividing the district into the same number of director divisions as there are directors of the district, and designating the divisions and designating the boundaries thereof. If a majority of the votes cast are against division or redivision into director districts, the board shall order the petition denied. [1961 c 192 § 7; 1939 c 13 § 6; RRS § 7505–5f.]

87.04.080 Election of directors—Terms. At the next general election of directors of a district which has been divided into director divisions, the electors of the first division shall select the director then to be elected on the board, and if more than one director is to be selected, the second division shall select one, and so on in numerical order, until, as the terms of incumbent directors expire, all the divisions are represented on the board, and thereafter directors shall be elected from the divisions in rotation, as their respective terms of office expire: *Provided*, That if following the numerical order of director divisions will result in any year in one division having more than one director and one division having no director, then the numerical order of the divisions shall not be followed for the year or years in question but the electors of the next highest numbered division without representation on the board of directors shall select the director then to be elected on the board. If such a district is organized but has not yet held an annual election of officers, it shall, at its next annual election, select directors for three, two and one–year terms respectively, and if the district is managed by a

board of three directors, the first division shall select a director for the three-year term, the second division shall select one for the two-year term, and the third division shall select one for the one-year term, and thereafter their successors shall be elected for three-year terms, respectively. If the district has five directors, the first and second divisions shall each select a director for the three-year term, the third and fourth divisions shall each select one for the two-year term, and the fifth division shall select one for the one-year term, and thereafter their successors shall be elected for three-year terms respectively. If the district has seven directors, the first, second and third divisions shall each select a director for the three-year term, the fourth and fifth divisions shall each select a director for the two-year term, and the sixth and seventh divisions shall each select a director for the one-year term, and thereafter their successors shall be elected for three-year terms respectively. [1961 c 192 § 8; 1939 c 13 § 8; RRS § 7505-5h.]

Ballots, declaration of candidacy, nominating petitions: RCW 87.03.075.

Elections are governed by irrigation district laws: RCW 87.03.030.

87.04.090 Levy limitation until water received when federal works or contracts involved—Exception. Lands in a district so divided into director divisions, which are to receive water from a system of works to be constructed by the federal government or under a contract between the district and the federal government shall not be assessed more than five cents an acre in any one calendar year until the secretary of the interior announces that water is ready for delivery to the land: *Provided*, That this section shall not be applicable to districts comprising less than two hundred thousand acres. [1969 ex.s. c 93 § 1; 1961 c 192 § 9; 1939 c 13 § 9; RRS § 7505-5i.]

Assessment: RCW 87.03.240 through 87.03.305.

Board's powers and duties (contracts with state or United States): RCW 87.03.140.

87.04.100 Certain excess lands under federal contracts, assessment limitation—Exception. Lands in such a district, which are designated as excess lands under the act of congress of May 27, 1937, and which have been subscribed by the owner thereof to the excess land contract, shall not be assessed more than above specified until after the date fixed in the contract for the sale of such excess lands, unless they have been sooner sold or the owner has sooner called for water thereon: *Provided*, That this section shall not be applicable to districts comprising less than two hundred thousand acres. [1961 c 192 § 10; 1939 c 13 § 10; RRS § 7505-5j.]

Assessments: RCW 87.03.240 through 87.03.305.

87.04.900 Chapter supplemental to other laws—General repealer. This chapter is intended, and shall be construed, to be supplemental to and shall become a part of the law relating to irrigation districts, and any act or

part of the same inconsistent or in conflict with the provisions of this act or any part thereof are hereby repealed. [1961 c 192 § 11; 1939 c 13 § 11; RRS § 7505-5k.]

87.04.910 Severability—1939 c 13. Each section and provision of this chapter shall be considered separable from every other section and provision of the chapter, and should any section or provision thereof be held unconstitutional, the unconstitutionality of such section or provision shall not affect or impair the validity of the remainder of the chapter but in that event the unconstitutional section or provision shall be eliminated and the remainder of the chapter remain in full force and effect. [1939 c 13 § 12; RRS § 7505-5l.]

Chapter 87.19

REFUNDING BONDS—1923 ACT

Sections

87.19.005	Method not exclusive.
87.19.010	Refunding bonds authorized—Election.
87.19.020	Notice and conduct of election.
87.19.030	Form of bonds, interest, maturity, etc.
87.19.040	Bonds to be refunded in series.
87.19.050	Refunding bonds may be exchanged or sold—Record.

87.19.005 Method not exclusive. In addition to any other method of refunding irrigation district bonds authorized by law, bonds heretofore or hereafter issued by any irrigation district in this state may be refunded in whole or in part in the manner hereinafter provided. [1933 ex.s. c 11 § 1; 1923 c 161 § 1; RRS § 7434-1. Formerly RCW 87.19.060.]

Validation—1933 ex.s. c 11: "Any and all proceedings heretofore had and any and all bonds heretofore authorized and issued to redeem or to refund unmatured bonds under the provisions of chapter 161, Laws of 1923, as amended by chapter 259, Laws of 1927, but without the unanimous consent of the holders of unmatured bonds to be refunded, are hereby validated and confirmed." [1933 ex.s. c 11 § 4.]

87.19.010 Refunding bonds authorized—Election. Whenever the board of directors of any irrigation district shall deem it for the best interest of said district that any or all outstanding bonds of said district be refunded, they shall so declare by resolution duly adopted and recorded in the minutes of said board and shall, with the written approval of the state director of the department of ecology, submit the question to the legally qualified electors of said district at a general election or at a special election called for that purpose and if a majority of said electors voting at said election vote in favor thereof the directors of said district shall issue and exchange said bonds for those outstanding, or sell said bonds and retire said outstanding bonds. The bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 227; 1923 c 161 § 2; RRS § 7434-2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.19.020 Notice and conduct of election. The notice of election provided for in this chapter shall be given and said election held in all respects in accordance with RCW 87.03.200, except in first class and class A counties, where the said notice and election shall be held in the manner provided by law for such counties. [1923 c 161 § 6; RRS § 7434–6.]

*Elections by lesser constituencies in class AA and class A counties—
Special elections: RCW 29.13.020.*

Times for holding elections and primaries: Chapter 29.13 RCW.

87.19.030 Form of bonds, interest, maturity, etc. (1) Said bonds shall be issued in series and in denominations of not less than one hundred dollars nor more than one thousand dollars. The first series shall mature not later than ten years and the last series not later than forty years. Each series shall be numbered from one, up consecutively, shall bear the date of their issue, and shall bear interest at any rate or rates as authorized by the board of directors of said district, payable semiannually on the first day of January and July of each year, and the principal and interest may be made payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or at any fiscal agency of the state of Washington. Said bonds shall be negotiable in form and the bonds shall be signed by the president and secretary of the board of directors of said district and the seal of said district, affixed. The signatures of the president and secretary may, however, appear by lithographic facsimile. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 228; 1970 ex.s. c 56 § 96; 1969 ex.s. c 232 § 55; 1923 c 161 § 3; RRS § 7434–3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Facsimile signatures: RCW 39.44.100.

87.19.040 Bonds to be refunded in series. Where the bonds to be refunded are serial bonds and not subject to call, the refunding bonds or any part of the same may be issued in such series as the board of directors of the district shall deem necessary to take up the series or any part thereof to be refunded, and shall be dated as of the maturity of the series or any part of the same to be refunded. The election aforesaid shall be sufficient authority for the directors to issue sufficient bonds to retire the entire outstanding issue of bonds to be refunded, but none of said refunding bonds shall be signed before the date of their issue, and until signed shall be deposited and kept in the office of the county treasurer; with the consent of the holders of all or any portion of the outstanding bonds of any issue the directors may retire all or any portion of such bonds before their maturity and may issue refunding bonds for that purpose. [1933 ex.s.

c 11 § 3; 1927 c 259 § 2; 1923 c 161 § 5; RRS § 7434–5.]

87.19.050 Refunding bonds may be exchanged or sold—Record. Bonds issued under and by virtue of this chapter may be exchanged for outstanding bonds at not less than the par value of the bonds refunded or may be sold at not less than ninety percent of their par value, and all money derived from the sale of such bonds shall be applied to the redemption of any or all of the outstanding bonds of said district to be refunded and any such outstanding bonds so refunded shall be endorsed in red ink "Refunded Bonds" and filed and preserved for one year and then destroyed by the county treasurer in the presence of witnesses: and the secretary of said district and the county treasurer of said county shall keep a record of such bonds so refunded and shall note the date of the refunding and the date of the destruction of the refunded bonds and in whose presence they were destroyed. [1933 ex.s. c 11 § 2; 1923 c 161 § 4; RRS § 7434–4.]

Chapter 87.22

REFUNDING BONDS—1929 ACT

Sections

87.22.010	Refunding authorized.
87.22.020	When proceedings may be instituted.
87.22.030	Petition—Contents.
87.22.040	Schedule of maximum benefits.
87.22.050	Hearing, time and place of.
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87.22.065	Notice—Contents.
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87.22.275	Rights of bond owners—Lien of bonds—Manner of payment.
87.22.280	Judicial confirmation.
87.22.900	Severability—1929 c 120.
87.22.910	Construction—Chapter additional method.

87.22.010 Refunding authorized. Any or all bonds heretofore issued by any irrigation district in this state may be refunded as hereinafter provided. [1929 c 120 § 1; RRS § 7530-1. FORMER PART OF SECTION: 1929 c 120 § 40; RRS § 7530-40, now codified as 87.22.910.]

87.22.020 When proceedings may be instituted. Before any proposition for the issuance of limited liability refunding bonds, as provided for in this chapter, of an irrigation district in this state shall be submitted to the electors thereof, the board of directors of said district shall at their option have authority, upon the written consent of the owners of at least fifty-one percent of the face value of the bonds proposed to be refunded, and upon the written approval of the state department of ecology, and of the owners of fifty-one percent of the acreage of the land within the district, to institute proceedings in the superior court of the proper county to determine the irrigable acreage of the lands which shall be subject to assessment for the payment of said refunding bonds and the interest thereon, and to determine the maximum benefits to be received by said lands from said proposed refunding bonds, in the manner herein provided. [1983 c 167 § 229; 1929 c 120 § 2; RRS § 7530-2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.22.030 Petition—Contents. The said board of directors shall institute such proceedings by filing a petition in the superior court of the county in which the greater part of the lands in the district are situated. Said petition shall give the name of the district, shall set out the nature of its water rights and the general character of its irrigation works and distribution system, shall state the amount, maturity schedule of minimum annual installments of principal and maximum interest rate of the proposed refunding bonds, shall state the approximate irrigable acreage in the district and the probable approximate aggregate annual income therefrom during the life of the proposed refunding bonds, shall recite that the required consent of the owners of the bonds to be refunded has been obtained and shall state such other matter, if any, the said board of directors may deem pertinent to the proceedings, shall pray for the determination of the irrigable acreage and of the maximum benefits aforesaid and shall be signed and verified by the president of the said board of directors. [1983 c 167 § 230; 1929 c 120 § 3; RRS § 7530-3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.22.040 Schedule of maximum benefits. There shall accompany said petition as an exhibit thereto a schedule of maximum benefits and of irrigable acreage for all the respective lands in the district. Such schedule shall contain in appropriate columns the name of the person to whom such tract of real property was assessed and the description of said property according to the district assessment roll last equalized, in a third column

with appropriate heading shall be specified after each said description of land the maximum benefit to be received from the proposed refunding bond issue with the maximum benefits segregated into its three component parts—(1) the amount required to pay the lands' proportional part of the principal of the bonds; (2) the amount required to pay the lands' proportional part of the interest over the term of the bonds; (3) the amount of benefits in excess of the lands' proportional part of the principal of the bonds and the interest over the term of the bonds; and in another appropriately specified column shall be stated after each tract the irrigable acreage thereof which will be assessed for payment of the proposed refunding bonds. Said schedule shall be signed by the secretary of the district. [1931 c 42 § 1; 1929 c 120 § 4; RRS § 7530-4.]

87.22.050 Hearing, time and place of. Upon the filing of said petition with the schedule of irrigable acreage and maximum benefits, the court shall fix a time and place for hearing the same and shall order the secretary of the district to give and publish a notice of said hearing. Said hearing may be held at the place fixed in the order and may be adjourned to a place certain in any county in which any lands within the district are situated, and may be continued from time to time and adjourned from county to county for the convenience of landowners and other interested persons. [1929 c 120 § 5; RRS § 7530-5.]

Official paper for publication: RCW 87.03.020.

87.22.060 Notice—Service. The notice of said hearing shall be given and published in the same manner, except as herein otherwise provided, and for the same length of time that a notice of a special election to determine whether the bonds of the district shall be issued is required to be given and published. [1929 c 120 § 6; RRS § 7530-6. FORMER PART OF SECTION: 1929 c 120 § 7; RRS § 7530-7, now codified as RCW 87.22.065.]

Bonds, election for, etc. (notice): RCW 87.03.200.

87.22.065 Notice—Contents. Said notice shall state that the district (naming it) proposes to issue and dispose of a refunding bond issue specifying the amount; that proceedings have been instituted in the superior court of the state of Washington in and for the specified county to determine the maximum benefits to be received by the lands within the operation of said district from the issuance and disposal of said proposed bond issue, and further to determine the irrigable acreage which will be assessed for the payment of said bonds, shall state that a schedule of the lands involved together with a statement of the amount of maximum benefits received by the amount of irrigable acreage in each respectively, is on file in said proceedings and may be inspected by any interested person, shall state the time and place fixed for the hearing of the petition and shall state that any person interested in such proceedings may on or before the day fixed for said hearing file his written objections thereto with the clerk of said court, or he will be

forever bound by such orders as the court shall make in such proceedings. [1929 c 120 § 7; RRS § 7530-7. Formerly RCW 87.22.060, part.]

87.22.070 Hearing—Decree. At the time and place stated in the notice of said hearing, the court shall consider said petition and shall receive such pertinent evidence as may be offered in support thereof or against the same, shall enter a decree fully determining the maximum benefits received by and the irrigable acreage in, the several tracts of land involved as shown by the schedule and as prayed for in said petition. Said action shall be an equitable one in rem and the court shall have full authority to make and issue any and all necessary orders and to do any and all things proper or incidental to the exercise of its jurisdiction in this connection. At said hearing the matters set forth in said petition and accompanying schedule shall be presumed to be true and correct in the absence of sufficient evidence to the contrary. [1929 c 120 § 8; RRS § 7530-8.]

Refunding bonds—Form—Manner of payment—Interest rate (decree may determine): RCW 87.22.150.

87.22.080 Benefits, how determined—Dismissal—Continuance—Waiver. The maximum benefits accruing to the several tracts of land in the district from the proposed refunding bond issue shall be considered as new and independent of that accruing from the bonds to be refunded and in determining the maximum benefits as prayed for in said petition, the court shall not be limited to a consideration of the enhancement of market value of the lands involved arising immediately from the issuance and disposal of the proposed refunding bonds but shall have authority to consider such benefits as shall accrue to said lands from the plan of financing provided by the proposed bonds and from the continued operation of the irrigation system under the administration of the district during the life of said refunding bonds and any other benefits that may accrue. If the court finds that the aggregate amount of said maximum benefits shall not equal at least double the amount of the principal of the proposed refunding bonds, to which shall be added the interest computed at the rate specified in the refunding bonds, it shall enter a decree dismissing the proceedings and the district shall have no authority to issue the proposed refunding bonds until a satisfactory decree has been obtained under the provisions of this chapter: *Provided*, That nothing herein contained shall be construed to prevent the district from continuing the hearing for the purpose of modifying the proposed refunding bond plan or for the purpose of otherwise meeting the objection of the court, nor shall the dismissal of the proceeding be in anywise prejudicial to the institution of a subsequent action for the same purpose; *And provided further*, That nothing herein contained shall be construed to prevent the court from entering a decree upon stipulation of the holders of the bonds to be refunded to waive their right to part of the indebtedness represented by the bonds to be refunded, so that the proposed refunding bond issue comes within the statutory requirements as to maximum benefits, or to accept

refunding bonds based on a lesser aggregate maximum benefit than that required by the statute. [1931 c 42 § 2; 1929 c 120 § 9; RRS § 7530-9. FORMER PART OF SECTION: 1929 c 120 § 10; RRS § 7530-10, now codified as RCW 87.22.085.]

87.22.085 Irrigable acreage, how determined. In determining the irrigable acreage as provided herein, the court shall consider all lands included in the district capable of being used for agricultural purposes, provided that no lands shall be found to be irrigable which are not irrigable from the plan of the irrigation works of the district; and provided that nothing herein contained shall be construed to prevent a reconsideration of the irrigability of lands found nonirrigable upon the modification or enlargement of the irrigation system whereby said lands at first found nonirrigable may be irrigated by the district system. [1929 c 120 § 10; RRS § 7530-10. Formerly RCW 87.22.080, part.]

87.22.090 Appeal—Notice. Appeal may be taken to the supreme court or the court of appeals from the judgment entered in said proceedings in the same manner as in other cases in equity. Notice of appeal need be served only on the persons who have appeared in said proceedings and on the president of the board of directors if the district is respondent, or on their respective attorneys of record in the proceedings. [1971 c 81 § 173; 1929 c 120 § 11; RRS § 7530-11.]

87.22.100 Final judgment conclusive. The judgment of the court determining maximum benefits and the irrigable acreage in such proceedings, unless appealed from within the time prescribed by law, and upon final judgment on appeal, shall be conclusive, except as herein otherwise provided, upon and against each and every owner of said bonds issued as proposed and upon and against every tract of land in the district, upon and against those owning the same or having any interest therein, including minors, insane persons, those convicted of crime as well as those free from disability, and upon and against those who may have appeared in said proceedings. [1929 c 120 § 12; RRS § 7530-12. FORMER PART OF SECTION: 1929 c 120 § 13; RRS § 7530-13, now codified in RCW 87.22.105.]

87.22.105 Final judgment conclusive—Exception. Said judgment shall be final and conclusive upon and against all lands in the district on appeal as aforesaid, except as to the particular tract or tracts involved in the appeal. [1929 c 120 § 13; RRS § 7530-13. Formerly RCW 87.22.100, part.]

87.22.110 Transcript to other counties. A transcript of so much of the judgment in said proceedings as pertain to the lands situated in each county other than the one in which the proceedings were instituted shall be certified by the clerk of the court and mailed to the county clerk of each of said other counties respectively for record among the recorded judgments therein. [1929 c 120 § 14; RRS § 7530-14.]

87.22.120 Election—Question to electors. Upon final determination of maximum benefits and irrigable acreage aforesaid, the board of directors of the district shall submit to the electors of the district possessing the qualifications prescribed by the irrigation district law the question whether refunding bonds of the district in amount and of the maturity proposed by said board shall be issued and exchanged for outstanding bonds as herein provided. [1929 c 120 § 15; RRS § 7530-15. FORMER PART OF SECTION: 1929 c 120 § 16; RRS § 7530-16, now codified as RCW 87.22.125.]

Qualification of voters and directors: RCW 87.03.045.

87.22.125 Election—Procedure. Except as herein otherwise specifically provided said election shall be called, noticed, conducted and the results thereof determined in the same manner and by the same officials as that provided by law for the calling, noticing, conducting and canvassing of original bond elections in irrigated districts. [1929 c 120 § 16; RRS § 7530-16. Formerly RCW 87.22.120, part.]

Bond elections: RCW 87.03.200.

87.22.130 Election—Notice, contents. The notice of said election shall specify the time and place of the election, the amount of the proposed refunding bonds, the maturity, the schedule of the minimum annual payments of the principal thereof and the maximum annual rate of interest said bonds shall bear, as approved by the court in the decree determining maximum benefits and irrigable acreage. [1929 c 120 § 17; RRS § 7530-17.]

87.22.140 Election—Majority vote affirmative, procedure. If a majority of the votes cast at said election are in favor of the proposed refunding issue the board of directors shall thereupon have authority to cause refunding bonds of the district in the amount and on the basis of the plan of payment and rate of interest proposed, to be issued and exchanged as herein provided. [1929 c 120 § 18; RRS § 7530-18. FORMER PART OF SECTION: 1929 c 120 § 19; RRS § 7530-19, now codified in RCW 87.22.145.]

87.22.145 Exchange of bonds. Refunding bonds provided for under this chapter may be exchanged for any or all of the bonds to be refunded on such basis as may be agreed upon between the board of directors of the district and the bond owners: *Provided*, That said refunding bonds shall not be issued in a greater sum than the total aggregate face value of the bonds to be refunded. [1983 c 167 § 231; 1929 c 120 § 19; RRS § 7530-19. Formerly RCW 87.22.140, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.22.150 Form of bonds—Manner of payment—Interest rate. (1) Said refunding bonds shall be issued in such denominations as the board shall determine, but in the same denominations so far as practicable as the bonds to be refunded and shall mature at the date specified in the notice of election but not in any

event later than thirty years from the date thereof, and shall be payable in minimum annual installments specified on a percentage basis and amortized to provide for full payment of the bonds with interest at maturity: *Provided*, That in lieu of the annual payments of principal and semiannual payments of interest as provided in this chapter, the court may prescribe the form, manner of payment, and interest rate or rates of the refunding bonds, in the decree determining maximum benefits and irrigable acreage; and said decree may grant the district the right to pay at the date of any annual or semiannual payment, one or more next accruing annual or semiannual installments less the interest on that part of the principal thus paid in advance: *And provided*, In all cases in which the court determines the form, manner of payment, and interest rate of the refunding bonds in the decree determining maximum benefits, all notices provided in this chapter and any other provision thereof, shall be given and construed in conformity with the terms and conditions of said bond prescribed in said decree. Such bonds may be in any registered form as provided for in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in any registered form and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 232; 1970 ex.s. c 56 § 97; 1969 ex.s. c 232 § 56; 1931 c 42 § 3; 1929 c 120 § 20; RRS § 7530-20.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Hearing—Decree: RCW 87.22.070.

87.22.160 Interest on unpaid bond installments—When payable. All unpaid installments on account of the principal of said refunding bonds shall bear interest from the date of the bonds at a rate or rates as authorized by the board of directors of the district. Different installments of the principal of said bonds may bear different rates of interest if it is so provided in the bond plan. Interest shall be payable semiannually on the first day of January and July of each year. [1970 ex.s. c 56 § 98; 1969 ex.s. c 232 § 57; 1929 c 120 § 21; RRS 7530-21. FORMER PART OF SECTION: 1929 c 120 § 22; RRS § 7530-22, now codified as RCW 87.22.165.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

87.22.165 Bond payments, where payable. Both principal and interest shall be made payable at the office of the county treasurer of the county in which the office of the board of directors of the district is situated. [1929 c 120 § 22; RRS § 7530-22. Formerly RCW 87.22.160, part.]

87.22.170 Bond contents—Transferability—Priority. Said bonds shall express upon their face that they were issued by authority of this chapter, stating its title and date of approval, that the district reserves the

right to pay on account of the principal thereof annual installments at a greater rate than the minimum rate stated in the bonds, that said bonds are transferable only on the registration book of the county treasurer's office at which said bonds are payable; that any attempted transfer of said bonds not recorded in said registration book shall be void so far as the rights of the district are concerned and that said bonds are of equal priority, payable with interest on a pro rata basis from revenues derived from annual assessments levied against the irrigable benefited lands within the district. [1929 c 120 § 23; RRS § 7530-23. FORMER PART OF SECTION: 1929 c 120 § 24; RRS § 7530-24, now codified as RCW 87.22.175.]

87.22.175 Bonds—Signature—Registration book. Said bonds shall be signed by the president of the board and secretary of the district and the seal of the district shall be impressed thereon. The term "registration book" as used in chapter 87.22 RCW shall constitute the method of registration adopted in conformance with RCW 39.46.030. [1983 c 167 § 233; 1929 c 120 § 24; RRS § 7530-24. Formerly RCW 87.22.170, part.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

87.22.190 Transfer on registration book required. Said bonds shall be transferable only on the registration book and any attempted transfer of said bonds not recorded in said registration book shall be void so far as the rights of the district are concerned. [1983 c 167 § 234; 1929 c 120 § 26; RRS § 7530-26. FORMER PART OF SECTION: 1929 c 120 § 27; RRS § 7530-27, now codified as RCW 87.22.195.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

87.22.200 Bonds of equal priority. Said bonds shall be of equal priority and shall be paid on a pro rata basis, in proportion to their respective face values, *Provided*, That for purposes of identification only said bonds may be numbered consecutively. [1929 c 120 § 28; RRS § 7530-28.]

87.22.210 Payment to record owner. Payment by the said county treasurer of any installment of or interest on said bonds, or any of the same, to the recorded owner thereof as shown on said registration book shall constitute a valid payment, without surrender of said bonds or any of the same, provided that final payment on account of any bond shall not be made until and unless the same is surrendered. [1929 c 120 § 29; RRS § 7530-29. FORMER PART OF SECTION: 1929 c 120 § 30; RRS § 7530-30, now codified as RCW 87.22.215.]

87.22.215 Payment to agent. Any bondholder or group of bondholders shall have the right to request said county treasurer in writing to pay the interest and installments of principal of his or their bond or bonds to such agent as may be designated in said request and

payment to said agent shall constitute a valid payment to the record owner or owners of said bond or bonds within the provisions of this chapter. [1929 c 120 § 30; RRS § 7530-30. Formerly RCW 87.22.210, part.]

87.22.230 Assessments—Limitations. No tract of land shall be assessed by the district during the life of the proposed bonds when issued for the purpose of paying the principal of or interest on said bonds in an aggregate amount in excess of double the amount determined in the decree fixing maximum benefits under subdivision (1) of RCW 87.22.040, together with the interest on the principal computed at the rates specified in the bond, and any assessment in excess thereof shall be void. In addition to its regular normal assessment for the principal or interest of said bonds, no tract of land shall be assessed in any one year to make up past or anticipated delinquencies of assessments or both levied or to be levied against the lands in the district for said purposes, in excess of fifty percent of its regular normal assessment for said bonds. [1931 c 42 § 4; 1929 c 120 § 31; RRS § 7530-31.]

87.22.240 Assessments—Methods of payment. The owner of any land within said irrigation district which shall be liable for payment of said refunding bonds shall have the right to pay the same in said annual or semi-annual installments or to make payment at any time when installments are due as in this section provided: (1) To pay an amount equal to the amount fixed in said decree determining the maximum benefits under subdivisions (1) and (2) of RCW 87.22.040 or the amount of the unpaid balance of said sums if such payment is not made until one or more installments have been paid, together with the amount fixed by said decree under subdivision (1) of RCW 87.22.040, and thereafter no further assessment shall be levied against such tract of land; (2) To pay the amount of benefits fixed in the decree determining the maximum benefits under subdivision (1) of RCW 87.22.040 or the unpaid balance thereof if such payment is made after one or more installments shall have been paid, with interest on the amount paid to the time of making payment, and thereafter such lands shall not be subject to assessments except to meet delinquencies of principal and/or interest on said bonds, for which purpose additional assessments shall be levied against said tract of land to an amount not exceeding the amount found in the decree fixing the maximum benefits under subdivision (1) of RCW 87.22.040; or (3) To pay any additional installments of the principal with interest accrued on the amount so paid at the time of the payment, and thereafter, in levying assessments against said tracts of land, said owner shall be given credit for such advance payment. The treasurer of the proper county shall have authority to receive for the benefit of the refunding bond fund of the district the payments herein authorized to be made. [1931 c 42 § 5; 1929 c 120 § 32; RRS § 7530-32. FORMER PART OF SECTION: 1931 c 42 § 6; 1929 c 120 § 33; RRS § 7530-33, now codified as RCW 87.22.245.]

87.22.245 Assessments—Receipts. In case the owner of any land within an irrigation district shall make payment in accordance with the second provision in RCW 87.22.240, the county treasurer shall issue to such landowner a receipt stating that such payments have been made and that such lands shall thereafter be subject only to the assessments provided for in accordance with such provisions; and, in case any landowner within such irrigation district shall make any payments in accordance with the third provision of RCW 87.22.240, the county treasurer shall issue to such landowner a receipt showing the payment of such installment or installments and stating that credit therefor is thereby given to such landowner as to apply to future installments. [1931 c 42 § 6; 1929 c 120 § 33; RRS § 7530-33. Formerly RCW 87.22.240, part.]

87.22.250 Assessments—Payment in money only. Full payment of the decreed maximum benefits accruing to any tract of land aforesaid can be made by the payment of money only and no sale of any tract of land on account of delinquent district assessments shall be construed as a satisfaction chargeable against the amount of maximum benefits decreed as accruing to said tract by reason of said refunding bonds. [1929 c 120 § 34; RRS § 7530-34.]

87.22.260 Sale or lease of foreclosed land—Disposition of proceeds. In any instance where an irrigation district having outstanding refunding bonds issued under the provision of this chapter, sells or rents a tract of land previously acquired by sale on account of delinquent district assessments, the proceeds of said sale or lease shall be distributed to the expense fund and the refunding bond fund of the district in proportion to the respective amounts of the district exactions made against said tract of land for the benefit of these two funds payable in the year in which the district assessment for which said tract was sold, became delinquent. [1929 c 120 § 35; RRS § 7530-35.]

87.22.270 Excess in bond fund—Apportionment. When the money in the refunding bond fund reaches an excess of ten percent of the amount necessary to meet the total aggregate minimum annual installment of the principal of said bonds and interest next payable, it shall be the duty of said treasurer to apportion said excess to the several bondholders on a pro rata basis in proportion to the par value of their respective bonds and include the same with the payments of the next annual installment of the principal of said bonds. [1929 c 120 § 36; RRS § 7530-36.]

87.22.275 Rights of bond owners—Lien of bonds—Manner of payment. Except as herein otherwise specifically provided, refunding bonds, authorized, issued and disposed of under the provisions of this chapter shall entitle the owners thereof to the same rights and privileges, shall constitute a lien on the same property and shall be paid in the same manner as the original bonds refunded by said bond issue, and said refunding

bonds shall be retired by the exaction of annual assessments levied against all the lands in the district: *Provided, however,* That any lands in the district against which no benefits are determined by the decree determining maximum benefits may be excluded from the district in the same manner in which lands may now be excluded from the districts against which there are no bond issues, and said lands so excluded shall be forever free of the liens of said refunding bonds; *And provided further,* That no assessments against any tract of land shall exceed the amount specified under RCW 87.22.230. [1983 c 167 § 235; 1931 c 42 § 7; 1929 c 120 § 37; RRS § 7530-37. Formerly RCW 87.22.220.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

87.22.280 Judicial confirmation. Proceedings had for the authorization, issuance and disposal of refunding bonds provided for herein may be considered, confirmed and approved by the court in proceedings authorized by the irrigation district act in the same manner and with the same effect, as proceedings had for authorization, issuance and disposal of other irrigation district bonds provided for by law, are considered, confirmed and approved. [1929 c 120 § 38; RRS § 7530-38.]

Proceedings for judicial confirmation: RCW 87.03.780 through 87.03.805.

87.22.900 Severability—1929 c 120. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1929 c 120 § 39; RRS § 7530-39.]

87.22.910 Construction—Chapter additional method. Nothing in this chapter contained shall be deemed or construed as abridging, enlarging or modifying any existing statute relating to refunding bonds of irrigation districts. This chapter is intended as an independent act providing an additional method for the issuance of refunding bonds of such districts. [1929 c 120 § 40; RRS § 7530-40. Formerly RCW 87.22.010, part.]

Chapter 87.25

CERTIFICATION OF BONDS

Sections	
87.25.010	Resolution to certify—Investigation.
87.25.020	Request for information—Compliance.
87.25.030	Transcript to attorney general—Report filed with secretary of state.
87.25.040	Contents of director's report.
87.25.050	Certificates to be attached to reports.
87.25.060	Supplemental report.
87.25.070	Form of secretary of state's certificate.
87.25.090	Expense to be paid by district.
87.25.100	Expenditures of bond proceeds—Employment and payment of attorneys.
87.25.120	Inspection of work as it progresses.
87.25.125	Certification in installments.
87.25.130	Forms prescribed.
87.25.140	Expenditures for construction—Approval—Budget.

87.25.900 Severability—1923 c 51.

87.25.010 Resolution to certify—Investigation. Whenever the board of directors of any irrigation district, organized and existing under and pursuant to the laws of the state of Washington, shall by resolution declare that it deems it desirable that any contemplated or outstanding bonds of such district, including any of its bonds authorized but not sold, be certified under the provisions of this chapter, such board of directors shall thereupon file a certified copy of such resolution with the director of the department of conservation and development of the state of Washington. Such director on receipt of a certified copy of such resolution shall, without delay, make or cause to be made a full investigation of the affairs of the district. [1923 c 51 § 1; RRS § 7432-1.]

87.25.020 Request for information—Compliance. In connection with the investigation and report provided for in this chapter, the director of the department of conservation and development is authorized and directed to make written request upon any state officer, institution or department for information, opinion or advice relative to any features of such investigation pertinent to the work of such officer or department. Upon receipt of such written request from said director, such officer or department shall, without delay, make such investigation as may be necessary and shall then furnish the said director with a report in writing giving the information, opinion or advice required by said director. [1923 c 51 § 2; RRS § 7432-2.]

87.25.030 Transcript to attorney general—Report filed with secretary of state. If, after the investigation herein provided for, the director finds that the project of the district is feasible, that the bond issue proposed to be certified is necessary and in sufficient amount to complete the improvement contemplated and that the district shows a clear probability of successful operation, he shall submit a complete transcript, to be furnished and certified by the district, of the proceedings relating to the organization and establishment of the district and relating to or affecting the validity of the bond issue involved, to the attorney general, for his written opinion as to the legality of the same. If the attorney general finds that any of the matters submitted in the transcript are not legally sufficient he shall so state in his opinion to the director of the department of conservation and development. The district shall then be given an opportunity, if possible, to correct the proceeding or thing complained of to the satisfaction of the attorney general. If the attorney general finds that all the matters submitted in the transcript as originally submitted or as subsequently corrected are legally sufficient said director shall thereupon file his report with the secretary of state and forward a copy to the secretary of the district, to be kept among the records of the district. [1923 c 51 § 3; RRS § 7432-3.]

87.25.040 Contents of director's report. Said report filed with the secretary of state shall contain conclusions upon the following points:

(1) The supply of water available for the project and the right of the district to so much water as may be needed.

(2) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

(3) The feasibility of the district's irrigation system and of the specific unit for which the bonds under consideration are desired, whether such system and unit be constructed, projected or partially completed; and the sufficiency of the amount of the proposed bond issue to complete the improvement contemplated.

(4) The reasonable market value of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned by such district or to be acquired or constructed by it with the proceeds of any such bonds.

(5) The reasonable market value of the lands included within the district.

(6) The plan of operation and maintenance used or contemplated by the district.

(7) The method of accounting employed or proposed to be employed by the district.

(8) Any other matter material to the investigation. [1923 c 51 § 4; RRS § 7432-4.]

87.25.050 Certificates to be attached to reports. Attached to said report of said director shall be the following:

(1) A certificate signed by the supervisor of hydraulics certifying to the amount and sufficiency of water rights available for the project.

(2) A certificate signed by a soil expert of the Washington State University, certifying as to the character of the soil and the classification of the lands in the district.

(3) A certificate signed by the supervisor of reclamation approving the general feasibility of the system of irrigation.

(4) A certificate signed by the attorney general of the state of Washington approving the legality of the organization and establishment of the district and the legality of the bond issue offered for certification. [1977 ex.s. c 169 § 112; 1923 c 51 § 5; RRS § 7432-5.]

Reviser's note: The devolution of the powers and duties of the supervisor of hydraulics to the department of ecology is traced in the note following the Title 90 title digest.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

87.25.060 Supplemental report. When the proposed bond issue has been finally approved by the director, he shall file a supplemental report with the secretary of state giving the numbers, date or dates of issue and denominations of said bonds which shall then be entitled to certification as herein provided. [1923 c 51 § 6; RRS § 7432-6.]

87.25.070 Form of secretary of state's certificate.

All bonds issued by any eligible district availing itself of the provisions of this chapter shall, before sale by the district, have attached thereto the certificate of the secretary of state, essentially in the following form:

Olympia, Washington, ----- (Insert date)

I, -----, secretary of state of the state of Washington, do hereby certify that the above named district has been investigated and its project approved by the department of conservation and development of the state of Washington; that the legality of the bond issue of which this bond is one has been approved by the attorney general of the state of Washington, and that the carrying out of the purposes for which this bond was issued is under the supervision of said department, as provided by law.

[Seal] -----

Secretary of State.

[1923 c 51 § 7; RRS § 7432-7.]

87.25.090 Expense to be paid by district. All necessary expenses incurred in making the investigation, examination, opinions and reports in this chapter provided for shall be paid at such times and in such manner as the director of the department of conservation and development shall require, by the irrigation district, the affairs of which have been investigated and reported on by the said director: *Provided*, That the benefit of any service that may have been performed and any data that may have been obtained in pursuance of the requirements of any law other than this chapter, shall be available for the use of the director without charge to said district. [1923 c 51 § 8; RRS § 7432-8.]

87.25.100 Expenditures of bond proceeds—Employment and payment of attorneys. Whenever the bonds of any irrigation district have been certified, as provided in this chapter, no expenditures shall be made from the proceeds of such bonds, nor shall any liability chargeable against such proceeds be incurred, until there shall have been filed with and approved by the director of the department of conservation and development a schedule of proposed expenditures in such form as said director shall prescribe, and no expenditures from the proceeds of said bonds shall be made for any purpose in excess of the amount allowed therefor in such schedule without the written consent of said director: *Provided, further*, That, if it shall be necessary, the attorney general may employ competent attorneys to assist him in the performance of his duties under this chapter, said attorneys to be paid by the irrigation district for which services are rendered from any of the funds of said district at such time and in such manner as the attorney general shall require. [1923 c 51 § 9; RRS § 7432-9.]

87.25.120 Inspection of work as it progresses. During the progress of any work to be paid for from the

proceeds of any bond issue certified as in this chapter provided, the director of the department of conservation and development shall make or cause to be made, from time to time, at the expense of the district, such inspection of the work as may be necessary to enable the said department to know that the plans approved by the director are being carried out without material modification, unless such modification has been approved by the director. [1923 c 51 § 10; RRS § 7432-10.]

87.25.125 Certification in installments. Whenever the survey, examinations, drawings, and plans of an irrigation district, and the estimate of cost based thereon, shall provide that the works necessary for a completed project shall be constructed progressively over a period of years in accordance with a plan or schedule adopted by resolution of the board of directors of the district, it shall not be necessary for the secretary of state to certify at one time all of the bonds that have been voted for the said completed project; but such bonds may be certified from time to time, when approved by the director of the department of conservation and development, as needed by the district. If the secretary of state shall certify all of the bonds necessary for the said completed project, even if said project is to be constructed progressively over a period of years in accordance with the aforesaid resolution of the board of directors, the bonds so voted and certified shall only be sold after prior written approval of said director. [1923 c 51 § 11; RRS § 7432-11. Formerly RCW 87.25.080.]

87.25.130 Forms prescribed. Districts coming within the provisions of this chapter shall prepare and maintain all records of their operation and proceedings upon forms prescribed by the director of the department of conservation and development. [1923 c 51 § 12; RRS § 7432-12.]

87.25.140 Expenditures for construction—Approval—Budget. When the bonds of any district have been certified as provided herein, it shall be unlawful for the district, during the life of said bonds to expend any money or incur any obligation for construction purposes without the written approval of the director of the department of conservation and development, nor shall such district issue and sell any bonds not certified as herein provided, and the district shall annually at such time as said director shall prescribe, prepare and file with the director, on forms furnished by that officer, a budget of its contemplated expenditures for maintenance and operation during the ensuing year. [1923 c 51 § 13; RRS § 7432-13. Formerly RCW 87.25.110.]

87.25.900 Severability—1923 c 51. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional. [1923 c 51 § 14; RRS § 7432-14.]

Chapter 87.28

REVENUE BONDS FOR WATER, POWER, DRAINS,
SEWERS, SEWAGE DISPOSAL, ETC.

Sections	
87.28.005	"County treasurer", "treasurer of the county", defined.
87.28.010	Revenue bonds authorized.
87.28.015	Interest bearing warrants authorized—Form, covenants, issuance and sale.
87.28.020	Form and terms of bonds.
87.28.030	Bonds payable only from special funds—Lien on revenues.
87.28.035	Determining amount payable into special funds.
87.28.040	Bonds do not constitute general debt of district.
87.28.070	Sale of bonds.
87.28.090	Board to set rates to provide necessary revenues.
87.28.100	Fixed share of revenues must be paid into special fund.
87.28.103	Election on proposed bond issue—Exception—Consent of state.
87.28.108	Payment of bonds—Covenants for securing authorized—Scope.
87.28.110	Payment of bonds.
87.28.120	Objects executed by resolution—Determining legality of proceedings.
87.28.150	Refunding revenue bonds authorized—Revenue bond redemption fund established—Use.
87.28.200	Utility local improvement districts—Authorized—Special assessments—Limitations.
87.28.210	Utility local improvement districts—Conversion of local improvement districts to.

87.28.005 "County treasurer", "treasurer of the county", defined. As used in this chapter, in accordance with RCW 87.03.440, the term "county treasurer" or "treasurer of the county" or other reference to that office means the treasurer of the district, if the district has designated its own treasurer, unless the context clearly requires otherwise. [1979 ex.s. c 185 § 17.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.010 Revenue bonds authorized. The board of directors of any irrigation district in this state which is furnishing or may furnish irrigation water, domestic water, electric power, drainage or sewerage services for which rates or tolls and charges are imposed or contract payments made, or any combination of such services, shall have authority to issue and sell bonds of the district payable from revenues derived from district rates or tolls and charges or contract payments for such service or services, and to pledge such revenues from one or more of such services for the payment and retirement of bonds issued for irrigation water, domestic water, electric power, and drainage or sewer improvements: *Provided*, That nothing in this section shall authorize a district which is not on March 8, 1973, engaged in providing electrical service permission to pledge revenue from water and sewer service to support the issuance of revenue bonds for the acquisition or construction of electrical power facilities other than those authorized by RCW 87.03.015(1), as now or hereafter amended. [1979 ex.s. c 185 § 8; 1973 c 74 § 1; 1949 c 57 § 1; Rem. Supp. 1949 § 7434–10.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.015 Interest bearing warrants authorized—Form, covenants, issuance and sale. Irrigation districts may also issue interest bearing warrants to provide interim financing pending the issuance of district revenue bonds. The items, form and content, and the manner of the issuance and sale of such interest bearing warrants as well as any covenants for the redemption of such warrants shall be established by resolution of the district's board of directors. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030. Such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 236; 1979 ex.s. c 185 § 18.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.020 Form and terms of bonds. (1) Said bonds shall be in such form as the board of directors shall determine; shall be in bearer form or registered as to principal or interest or both as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds; shall be in such denominations, shall be numbered, shall bear such date and shall be payable at such time or times up to a maximum of not to exceed forty years as shall be determined by the board of directors; shall bear interest at such rate or rates, payable at such time or times as authorized by the board of directors; shall be payable at the office of the county treasurer of the county in which the principal office of the district is located or at such other place as the board of directors shall provide and specify in the bonds; shall be executed by the president of the board of directors and attested and sealed by the secretary thereof and may have facsimile signatures of the president and secretary imprinted on any interest coupons in lieu of original signatures and the facsimile seal of the district and the facsimile signature of either the president or the secretary on the bonds in lieu of a manual signature. Said bonds may provide that the same or any part thereof at the option of the board of directors may be redeemed in advance of maturity on any interest payment date upon the terms and conditions established by the board, may include in the amount of the issue funds for the purpose of paying interest on the bonds during the period of construction of the facility being financed by the proceeds of the bonds, and may include in the amount of the issue funds for the purpose of establishing, maintaining, or increasing reserves in the manner, for the purposes, and subject to the restrictions set forth in RCW 39.44.140.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 237; 1979 ex.s. c 185 § 9; 1973 c 74 § 2; 1970 ex.s. c 56 § 99; 1969 ex.s. c 232 § 58; 1949 c 57 § 2; Rem. Supp. 1949 § 7434–11.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

Facsimile signatures: RCW 39.44.100.

87.28.030 Bonds payable only from special funds—**Lien on revenues.** The board of directors of the issuing district shall have authority and is required to create a special fund or funds to be carried in said county treasurer's office for the account of the district for the sole purpose of paying the interest and principal of such bonds. The board of directors of the issuing district shall obligate and bind the district to set aside and pay into such special fund or funds a fixed proportion, or any fixed amount of and not exceeding a fixed proportion of, or a fixed amount or amounts without regard to any fixed proportion of the gross revenues from the charges made by the district for the irrigation water, domestic water, the electric power, drainage, or sewer service, or any combination of such services as the case may be, for which the bonds are issued, and such bonds and the interest thereon shall be payable only out of such special fund or funds but shall be a lien and charge against all revenues received for the service or services the revenues of which are pledged to such fund or funds and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses of such service. [1979 ex.s. c 185 § 10; 1973 c 74 § 3; 1949 c 57 § 3; Rem. Supp. 1949 § 7434-12.]

Effective date—**Severability**—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.035 Determining amount payable into special funds. In creating such special fund or funds the board of directors of the district shall have due regard for the cost of the operation and maintenance of the district system required by the district to furnish said irrigation water, domestic water, electric power, drainage, or sewer service, as the case may be, and shall not set aside into such special fund a greater amount or proportion of the revenue of such service or services, than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged to such special fund or funds. [1979 ex.s. c 185 § 11; 1949 c 57 § 4; Rem. Supp. 1949 § 7434-13. Formerly RCW 87.28.080.]

Effective date—**Severability**—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.040 Bonds do not constitute general debt of district. Any such bonds, and interest thereon, issued against a special fund as herein provided shall be a valid claim of the owner thereof only as against said special fund or funds and its fixed proportion or amount of the revenue pledged to such fund or funds and shall not constitute a general indebtedness against the issuing irrigation district. Each such bond shall state upon its face that it is payable from a special fund or funds only,

naming the special fund or funds and the resolution creating the fund or funds. [1983 c 167 § 238; 1979 ex.s. c 185 § 12; 1949 c 57 § 5; Rem. Supp. 1949 § 7434-13a.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Effective date—**Severability**—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.070 Sale of bonds. (1) Such revenue bonds shall be sold in such manner as the board of directors shall deem for the best interests of the irrigation district, either at public or at private sale and at any price and at any rate or rates of interest, but if the board of directors shall dispose of said bonds in exchange for construction of improvements or for materials, such bonds shall not be disposed of for less than par for value received by the district.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 239; 1970 ex.s. c 56 § 100; 1969 ex.s. c 232 § 59; 1949 c 57 § 6; Rem. Supp. 1949 § 7434-14.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—**Saving**—**Severability**—1969 ex.s. c 232: See notes following RCW 39.52.020.

87.28.090 Board to set rates to provide necessary revenues. The board of directors of any irrigation district issuing such revenue bonds shall provide for revenues by fixing rates and charges for furnishing the service involved as the board shall deem necessary, in the manner provided by law and as fixed by resolution, the total revenues to be so estimated and determined as to be sufficient to take care of costs of maintenance, operation interest and principal amortization requirements and other charges involved. [1949 c 57 § 7; Rem. Supp. 1949 § 7434-15.]

Assessments and levies: RCW 87.03.240 through 87.03.305.

87.28.100 Fixed share of revenues must be paid into special fund. When a special fund has been created and bonds have been issued as herein provided, the fixed proportion or amount of the revenues pledged to the payment of the bonds and interest shall be set aside and paid into the special fund monthly as collected, as provided in the resolution creating the fund, and in case any irrigation district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the owner of any bond against the special fund may bring appropriate court action against the district and compel such setting aside and payment. [1983 c 167 § 240; 1979 ex.s. c 185 § 13; 1949 c 57 § 8; Rem. Supp. 1949 § 7434-16.]

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Effective date—**Severability**—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.103 Election on proposed bond issue—**Exception**—**Consent of state.** When the directors of

the district have decided to issue revenue bonds as herein provided, they shall call a special election in the irrigation district at which election shall be submitted to the electors thereof possessing the qualifications prescribed by law the question whether revenue bonds of the district in the amount and payable according to the plan of payment adopted by the board and for the purposes therein stated shall be issued. Said election shall be called, noticed, conducted and canvassed in the same manner as provided by law for irrigation district elections to authorize an original issue of bonds payable from revenues derived from annual assessments upon the real property in the district: *Provided*, That the board of directors shall have full authority to issue revenue bonds as herein provided payable within a maximum period of forty years without a special election: *And provided, further*, That any irrigation district indebted to the state of Washington shall get the written consent of the director of the department of ecology prior to the issuance of said revenue bonds. [1979 ex.s. c 185 § 14; 1949 c 57 § 9; Rem. Supp. 1949 § 7434-17. Formerly RCW 87.28.050.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Bonds, election for, etc.: RCW 87.03.200.

Qualification of voters: RCW 87.03.045.

87.28.108 Payment of bonds—Covenants for securing authorized—Scope. The board of directors may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on revenue bonds of the district, including but not being limited to covenants for: The establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the service or services of the district providing revenues for the payment of such bonds and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the service or services providing revenues for the payment of such bonds; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation, and management of the service or services providing revenues for the payment of such bonds and the accounting, insuring, and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its service or services providing revenues for the payment of such bonds or any part thereof; the appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenue, and receipts of the district; and the board of directors may make such other covenants as it may deem necessary to accomplish the

most advantageous sale of such bonds. The board of directors may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1979 ex.s. c 185 § 21.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.110 Payment of bonds. Said county treasurer shall have authority to pay said bonds and any appurtenant coupons in accordance with their terms from any moneys on hand in said special fund and when said bonds with interest have been fully paid, any moneys remaining in the fund shall be transferred to the expense fund of the district and the special fund closed. [1983 c 167 § 241; 1949 c 57 § 11; Rem. Supp. 1949 § 7434-19.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

87.28.120 Objects executed by resolution—Determining legality of proceedings. The board of directors of the issuing district shall have full authority by resolution to carry out the objects of this chapter in accordance with the provisions hereof and the same shall be liberally construed. The court shall have full jurisdiction under the irrigation district law to examine and determine the legality of the proceedings held to authorize and dispose of such revenue bonds, in the same manner and with the same legal effect as that provided in the case of other bonds of the district. [1949 c 57 § 12; Rem. Supp. 1949 § 7434-20. Formerly RCW 87.28.120 and 87.28.130.]

Bonds: RCW 87.03.200 through 87.03.235.

87.28.150 Refunding revenue bonds authorized—Revenue bond redemption fund established—Use. The board of directors of any irrigation district may, by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding revenue bonds to refund one or more of the following: Outstanding assessment bonds, revenue bonds, contracts with the United States or state of Washington, or any part thereof, and all outstanding local improvement district bonds, at maturity thereof, or before maturity thereof if they are subject to call for prior redemption or if all of the owners thereof consent thereto. The refunding bonds shall be issued in the manner and for the purposes set forth in chapter 39.53 RCW.

Whenever district bonds or contracts payable in whole or part from assessments have been refunded pursuant to this section, all assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balances, if any, in the reserve or guaranty funds for such refunded bonds and the proceeds received from any other assets owned by such funds shall be used in whole or in part as a reserve or guaranty fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of directors may determine. In the event that any warrants are outstanding against the local

improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, said bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants. [1983 c 167 § 242; 1979 ex.s. c 185 § 22.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.200 Utility local improvement districts—Authorized—Special assessments—Limitations. Any irrigation district shall have the power to establish utility local improvement districts within its territory and to levy special assessments within such utility local improvement districts in the same manner as provided for irrigation district local improvement districts: *Provided*, That it must be specified in any petition for the establishment of a utility local improvement district that the sole purpose of the assessments levied against the real property located within the utility local improvement district shall be the payment of the proceeds of those assessments into the revenue bond fund for the payment of revenue bonds, that no warrants or bonds shall be issued in any such utility local improvement district, and that the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into the revenue bond fund. [1979 ex.s. c 185 § 19.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

87.28.210 Utility local improvement districts—Conversion of local improvement districts to. The board of directors of any irrigation district may by resolution convert any then existing local improvement district into a utility local improvement district at any time prior to the adoption of a resolution approving and confirming the initial assessment roll of such local improvement district. The resolution so converting the local improvement district shall provide for the payment of the special assessments levied in that district into the special fund established or to be established for the payment of revenue bonds issued to defray the cost of the local improvement district. [1979 ex.s. c 185 § 20.]

Effective date—Severability—1979 ex.s. c 185: See notes following RCW 87.03.013.

Chapter 87.48

INDEMNITY TO STATE ON LAND SETTLEMENT CONTRACTS

Sections

87.48.010	Contracts for indemnity authorized.
87.48.020	Approval of contract—Execution—State obligation to enter into land settlement contract with federal government.
87.48.030	Assessments—Indemnity fund—Transfer to maintenance fund, when.
87.48.040	Estimate of expenses and losses—Payment.

87.48.010 Contracts for indemnity authorized. Any irrigation district by and through its board of directors is hereby authorized and shall have the power to enter into a contract with the state of Washington whereby it shall agree to repay to the state of Washington any expenses incurred by the state of Washington and to indemnify the state of Washington against any and all losses and damages which the state of Washington may suffer, under any contract between the state of Washington and the United States relating to land settlement in said district. This chapter shall apply to all irrigation districts and shall not be otherwise construed. [1925 ex.s. c 34 § 1; RRS § 7525-1.]

87.48.020 Approval of contract—Execution—State obligation to enter into land settlement contract with federal government. When any such irrigation district shall have duly executed and tendered to the state of Washington the contract of indemnity as it is herein empowered to do, the director of conservation and development of the state of Washington is hereby authorized, empowered and required to sign and execute such contract on behalf of the state of Washington. After having received any such contract of indemnity from any such irrigation district the said director of conservation and development is hereby authorized, empowered and required to enter into a contract on behalf of the state of Washington with the United States relating to the land settlement in such district if such contract shall be presented, or tendered by the United States, which contract, if entered into on or before June 30, 1926, shall have the same terms and provisions of that certain contract submitted to the state of Washington under authority of the act of congress approved March 3rd, 1925, entitled "An Act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1926, and for other purposes." *Provided*, That the liability of the state of Washington to the United States under such contract, if entered into on or before June 30, 1926, shall be limited to three hundred thousand dollars and be subject to appropriation therefor being made by the legislature. *Provided, further*, That the said director of conservation and development or any other officer of the state of Washington shall not enter into any such contract with the United States after June 30, 1926, unless and until any such contract shall have been presented to the legislature by the governor through the director of conservation and development and approved by a joint resolution of the legislature, which resolution shall be passed by a constitutional majority of both branches of the legislature by roll call. [1925 ex.s. c 34 § 2; RRS § 7525-2.]

87.48.030 Assessments—Indemnity fund—Transfer to maintenance fund, when. Any such irrigation district which shall have entered into any such contract of indemnity with the state of Washington is hereby empowered and shall annually be required to levy assessments against all the property within said district from time to time in such amounts as shall enable it to reasonably anticipate and promptly comply with its said contract with the state of Washington. Such assessments

shall be levied and be payable at the time and in the manner that its regular assessments are made and shall have the same validity, force and effect as assessments for any other purposes. Such assessments shall be levied for and shall be paid into a fund to be known as "The Indemnity Fund" and such fund shall not be used for any purpose other than to fulfill its obligations under its indemnity contract with the state of Washington. *Provided*, That when all expenses, losses or damages for which the district may become liable to the state of Washington under RCW 87.48.010 shall have been paid to the state of Washington any money then remaining in "The Indemnity Fund" shall be transferred to the maintenance fund of said district. [1925 ex.s. c 34 § 3; RRS § 7525-3.]

87.48.040 Estimate of expenses and losses—Payment. When the state of Washington shall be required to make any payment or expend any money in the performance of any such contract entered into with the United States, an estimate of the amount of expenses likely to be incurred in such performance, together with an estimate of future losses or damages that may occur under such contract shall be made by the director of conservation and development, who shall thereupon return a statement thereof to such district, and the board of directors of such district shall from time to time as required by the director of conservation and development levy against all the property within said district such assessments as may be necessary to repay to the state of Washington such estimated expenses, losses and damages. *Provided*, If such district has no money in the "The Indemnity Fund" to repay such expenses when the same shall be incurred or to pay such losses and damages as the same shall accrue it shall be the duty of the board of directors to cause warrants of the district to be issued in payment of such indebtedness, which warrants shall bear interest at a rate determined by the board and be paid from moneys paid into the indemnity fund by assessments levied as hereinbefore provided. [1981 c 156 § 32; 1925 ex.s. c 34 § 4; RRS § 7525-4.]

Chapter 87.52

DISSOLUTION OF DISTRICTS WITHOUT BONDS

Sections

	1897 ACT
87.52.010	Dissolution authorized.
87.52.015	Petition.
87.52.030	Election—Ballots—Qualified electors.
87.52.040	Vote required—Petition to court—Notice and publication of hearing—Court order.
87.52.060	Board of directors as trustees—Duties—Records to be delivered to clerk.
	1939 ACT
87.52.070	Dissolution when not brought under irrigation for twenty years.
87.52.080	Petition.
87.52.090	Election—Procedure when three-fifths vote for disorganization.
87.52.150	Disposal of real property—Right of adjacent owners.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

1897 ACT

87.52.010 Dissolution authorized. Any irrigation district, organized and existing by virtue of laws of this state, which has no bonded indebtedness outstanding, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. [1897 c 79 § 1; RRS § 7526. FORMER PART OF SECTION: 1897 c 79 § 2; RRS § 7527, now codified as RCW 87.52.015.]

87.52.015 Petition. A petition signed by one-third or more holders of title or evidence of title to lands within said district who shall be qualified electors thereof, reciting the fact that said district has no bonded indebtedness and praying that said district be disorganized under the provisions of RCW 87.52.010 through 87.52.060, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. [1897 c 79 § 2; RRS § 7527. Formerly RCW 87.52.010, part.]

87.52.030 Election—Ballots—Qualified electors. Upon the delivery of said petition the board of directors of said irrigation district shall, at their next succeeding regular monthly meeting, order an election, the date of which election shall be within twenty days from the date of said meeting of the board of directors and which election shall be conducted as other elections of irrigation districts are conducted. At said election the qualified electors of said irrigation district shall cast ballots which shall contain the words "Disorganize, Yes," or "Disorganize, No." No person shall be entitled to vote at any election held under the provisions of RCW 87.52.010 through 87.52.060 unless he is a qualified voter under the election laws of the state, and holds title or evidence of title to land in said district. [1897 c 79 § 3; RRS § 7528. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

*Irrigation district elections: RCW 87.03.030 through 87.03.110.
Registration of voters: Chapter 29.07 RCW.*

87.52.040 Vote required—Petition to court—Notice and publication of hearing—Court order. If three-fifths of the votes cast at any election under the provisions of RCW 87.52.010 through 87.52.060 shall contain the words "Disorganize, Yes," then the board of directors shall present to the superior judge of the county in which said irrigation district is located an application for an order of said superior court that such irrigation district be declared disorganized and dissolved, and that its affairs be liquidated and wound up, as provided for in RCW 87.52.010 through 87.52.060, and reciting that at an election of such irrigation district, held as provided in RCW 87.52.010 through 87.52.060, three-fifths of the votes cast contained the words "Disorganize, Yes," and such petition shall be certified to by the directors of said district. They shall also file with said superior court a statement, sworn to by the directors

of said irrigation district, showing all outstanding indebtedness of said irrigation district, or if there be no such indebtedness, then the directors shall make oath to that effect. Notice of said application shall be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in a newspaper of the county printed and published nearest to said irrigation district, once each week for four weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed in the notice, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the provisions of RCW 87.52.010 through 87.52.060 have been complied with he shall enter an order declaring said irrigation district dissolved and disorganized. [1897 c 79 § 4; RRS § 7529. Formerly RCW 87.52.040 and 87.52.050. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

87.52.060 Board of directors as trustees—Duties—Records to be delivered to clerk. Upon the disorganization of any irrigation district under the provisions of RCW 87.52.010 through 87.52.060, the board of directors at the time of the disorganization shall be trustees of the creditors and of the property holders of said district for the purpose of collecting and paying all indebtedness of said district, in which actual construction work has been done, and shall have the power to sue and be sued. It shall be the duty of said board of directors, and they shall have the power and authority, to levy and collect a tax sufficient to pay all such indebtedness, which tax shall be levied and collected in the manner prescribed by law for the levying and collection of taxes of irrigation districts. Any balance of moneys of said district remaining over after all outstanding indebtedness and the cost of the proceedings under RCW 87.52.010 through 87.52.060 have been paid shall be divided and refunded to the assessment payers in said irrigation district, to each in proportion to the amount contributed by him to the total amount of assessments collected by said district. Said board of directors shall report to the court from time to time as the court may direct, and upon a showing to the court that all indebtedness has been paid, an order shall be entered discharging said board of directors. Upon the entry of such order said board of directors and all the officers of said district shall deliver over to the clerk of said court all books, papers, records and documents belonging to said district, or under their control as officers thereof: *Provided*, That nothing herein contained shall be construed to validate or authorize the payment of any indebtedness of said district exceeding the legal limitation of indebtedness specified by law for irrigation districts; or any indebtedness contracted by such irrigation district or its officers without lawful authority. [1897 c 79 § 5; RRS § 7530.]

Assessments, levy and collection of taxes: RCW 87.03.240 through 87.03.305.

Powers as to incurring indebtedness: RCW 87.03.475.

1939 ACT

87.52.070 Dissolution when not brought under irrigation for twenty years. Any irrigation district of the state of Washington, now existing or hereafter organized, which has no bonded indebtedness outstanding, and which has been in existence for more than twenty years without having secured the irrigation of any of its lands, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. [1939 c 149 § 1; RRS § 7527-1. Formerly RCW 87.52.020, part.]

87.52.080 Petition. A petition signed by twenty-five or more holders of title or evidence of title to lands within said district who shall be qualified electors, reciting the fact that said district has no bonded indebtedness, has been in existence for more than twenty years, and has secured no irrigation for any of its lands, and praying that said district be disorganized under the provisions of RCW 87.52.070 through 87.52.090, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. [1939 c 149 § 2; RRS § 7527-2. Formerly RCW 87.52.020, part.]

87.52.090 Election—Procedure when three-fifths vote for disorganization. Upon the delivery of said petition, as aforesaid, the board of directors of said district, the secretary thereof, and all other officials provided by law, shall call, notice, conduct and canvass an election, and if three-fifths of the votes cast at said election are in favor of the disorganization of the district, shall proceed with the disorganization of the district, all in the manner, with the same powers and with the same force and effect and in accordance with RCW 87.52.030 through 87.52.060. [1939 c 149 § 3; RRS § 7527-3. Formerly RCW 87.52.030, part and 87.52.040, part.]

87.52.150 Disposal of real property—Right of adjacent owners. See RCW 87.03.820.

Chapter 87.53

DISSOLUTION OF DISTRICTS WITH BONDS

Sections	
87.53.010	Dissolution authorized—Consent of bondholders recorded.
87.53.020	Bondholders' consent necessary—Offer to buy district property.
87.53.030	Petition for dissolution.
87.53.040	Election to be called.
87.53.050	Manner of calling, noticing, conducting election—Ballot—Qualification of electors.
87.53.060	Election returns, effect—Records to auditor.
87.53.070	Transcript of proceedings—Financial statement.
87.53.080	Proceedings docketed in court—Notice to file claims—Claims barred, when.
87.53.090	Determination of claims—Court order—Appeal.
87.53.100	Trustee—Appointment—Compensation—Bond.
87.53.110	Sale of district assets.
87.53.120	Report of sale—Rights of purchasers.
87.53.130	Order of dissolution—Effect.
87.53.140	Assessments for unpaid obligations.

87.53.150 State's consent to dissolution.
 87.53.200 Disposal of real property—Right of adjacent owners.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

87.53.010 Dissolution authorized—Consent of bondholders recorded. An irrigation district may be dissolved and its affairs liquidated as herein prescribed. If there are outstanding bonds of the district the acknowledged uniform consent in writing of at least two-thirds in amount of the holders of the bonds must be recorded in the office of the auditor of the county in which the district board has its office. [1951 c 237 § 1. Prior: 1899 c 102 §§ 1, 2; RRS §§ 7531, 7532.]

Reviser's note: For prior laws on this subject see 1899 c 102; RRS §§ 7531–7543.

87.53.020 Bondholders' consent necessary—Offer to buy district property. The acknowledged uniform written consent of one hundred percent of the holders of bonds may provide for cancellation of part of the bonds and for the manner and terms of payment of the balance. The bondholders may also make a firm offer for all property and rights of the district, except property in the district sold for taxes and district assessments, to be paid for by turning over for cancellation an appropriate amount in bonds with accrued interest. [1951 c 237 § 2.]

87.53.030 Petition for dissolution. At least one-third of the electors of the district shall sign and file with the auditor a petition, reciting the substance of the uniform text of the bondholders' consent, that the consent has been filed, and praying that the district be dissolved and its affairs liquidated. [1951 c 237 § 3. Prior: 1899 c 102 § 3; RRS § 7533.]

87.53.040 Election to be called. The board of commissioners of the county shall at their present or next regular meeting, call an election to submit to the electors of the district the question of whether the district shall be so dissolved. They shall direct the auditor to give notice of the election and shall appoint the election officials. [1951 c 237 § 4. Prior: 1899 c 102 § 5; RRS § 7535.]

87.53.050 Manner of calling, noticing, conducting election—Ballot—Qualification of electors. The election shall be called upon the same notice and conducted in like manner as other elections of the district: *Provided*, That when the bondholder's consent to dissolution provides for an adjustment of the bonded debt and/or the terms and method of its payment the notice of election shall recite the substance thereof.

The ballot shall contain the words "For dissolution, Yes" and "For dissolution, No." No person not a qualified elector under the general election laws and a freeholder of the district shall be deemed a qualified elector under this chapter. [1951 c 237 § 5. Prior: 1899 c 102 § 4; RRS § 7534.]

District elections: RCW 87.03.030 through 87.03.110.

Qualification of voters: RCW 87.03.045.

87.53.060 Election returns, effect—Records to auditor. The election officials shall file with the auditor the returns within ten days of the election, and at their next meeting the commissioners shall canvass the returns, and if a majority of the votes cast favor dissolution, the commissioners shall declare the election carried. All records of the district shall, upon demand, be delivered to the auditor. [1951 c 237 § 6. Prior: 1899 c 102 § 6; RRS § 7536.]

87.53.070 Transcript of proceedings—Financial statement. The auditor shall deliver to the county clerk a certified copy of the transcript of the proceedings of the commissioners on the matter together with a statement of the district's cash assets, segregated as to the bond fund and the total of all other funds, and a statement of the debts of the district as they appear on the records, taking into account any reduction in bond debt offered by the bondholders in their consent to dissolution; also a general inventory of the district property segregated only as to main classes, together with any offer for same submitted in the bondholders' consent to dissolution. [1951 c 237 § 7. Prior: 1899 c 102 § 7; RRS § 7537.]

87.53.080 Proceedings docketed in court—Notice to file claims—Claims barred, when. The clerk shall docket the proceedings entitled "In the matter of the dissolution of _____ irrigation district," and the court shall direct the clerk to give notice thereof. The notice shall contain a general statement of the nature of the proceedings, and notify all persons having claims against the district to present them on or before a day specified therein, and shall be published once a week for at least six weeks in a newspaper of general circulation in the county. Any claim not so filed shall be barred. [1985 c 469 § 91; 1951 c 237 § 8. Prior: 1899 c 102 § 8; RRS § 7538.]

Official paper for publication: RCW 87.03.020.

87.53.090 Determination of claims—Court order—Appeal. If the court finds that the provisions of this chapter have been complied with, it shall then determine the validity and amount of the claims so filed. No claim barred by the statute of limitations shall be allowed. It shall separately determine the validity and amount of outstanding bonds with accrued interest, making allowances for any offer of adjustments contained in the bondholders' consent to dissolution, and shall order that all cash in the district's bond fund together with the proceeds from a sale of all the property and rights of the district shall be first applied to the redemption of outstanding bonds with interest; that other cash funds of the district be applied on payment of valid unsecured claims, and the remainder on the redemption of any balance of outstanding bonds with interest. The court shall further order that in the event the district's cash funds together with proceeds from the sale of district property and rights shall prove insufficient to discharge all valid obligations of the district, one or more annual assessments shall be made against the assessable property in the district, as herein provided, sufficient in

amounts to discharge all valid debt. The district or any person affected by the judgment may appeal therefrom within ten days of the entry of judgment. [1951 c 237 § 9. Prior: 1899 c 102 § 9; RRS § 7539.]

87.53.100 Trustee—Appointment—Compensation—Bond. Upon the entry of final judgment, the court shall issue an order appointing a trustee for the district and shall deliver to him a certified copy of the order. The court shall fix the compensation of the trustee and the amount of his bond to be obtained at the cost of the district. [1951 c 237 § 10. Prior: 1899 c 102 § 10, part; RRS § 7540, part.]

87.53.110 Sale of district assets. The trustee shall give notice that all the property and rights of the district, except property in the district sold for taxes or district assessments, will be sold pursuant to order of the court. The notice shall be given in the same manner and for the same time as for sale of real property on execution, except that it need not be posted.

The sale shall be made at public auction at the front door of the courthouse and may be adjourned from time to time not exceeding three weeks in all, by public announcement at the time and place of the sale.

Any claim established by the previous judgment of the court or any securities of the district may be accepted at face value on the purchase price: *Provided*, That any offer made in the bondholders' written consent to dissolution shall be considered a bid and shall be accepted in the absence of a better offer. No bid shall be considered nor shall any sale be made for less than all the property and rights of the district. The trustee shall forthwith disburse the cash funds of the district in accordance with the order of the court. [1951 c 237 § 11. Prior: 1899 c 102 § 10, part; RRS § 7540, part.]

Executions: Chapter 6.17 RCW.

87.53.120 Report of sale—Rights of purchasers. The trustee shall file with the clerk a report of the disposition made of the cash funds and of the sale and if the court finds the sale was fairly conducted, it shall enter an order confirming the sale, and the trustee shall execute and deliver to the purchaser an instrument conveying to him all property and rights of the district, free from all claims of the district or its creditors, which shall entitle the purchaser to immediate possession. [1951 c 237 § 12. Prior: 1899 c 102 § 11; RRS § 7541.]

87.53.130 Order of dissolution—Effect. Upon verification of the disposition of the cash funds and confirmation of the sale the court shall enter an order dissolving the district and discharging the trustee, and a certified copy of the order shall be recorded in the office of the auditor. Thereupon the district shall cease to exist, except for the purpose of collecting its indebtedness. All records of the proceedings shall be delivered to the auditor. [1951 c 237 § 13. Prior: 1899 c 102 § 13; RRS § 7543.]

87.53.140 Assessments for unpaid obligations. Upon the dissolution of the district the county commissioners shall determine from the records the remaining bond and other indebtedness of the district, and shall determine the proper number of annual assessments, not over five, necessary to discharge the debt. They shall cause the county assessor to prepare the annual assessment roll for the lands in the district, based upon the acreages shown on the last district assessment roll. The commissioners shall levy annual assessments, not exceeding five, upon all property in the district assessed for the bond fund on the district's last assessment roll and according to the ratios of benefits there shown, sufficient to pay any remaining claims, including bonds. They shall levy and equalize the assessments, after the same notice of hearing as are required of district directors on irrigation assessments. The county auditor shall perform the duties of the secretary of the district and the county treasurer shall be ex officio treasurer of the district and shall collect the assessments. In all other respects the general irrigation district laws shall govern.

Any funds remaining after all assessments have been collected and all indebtedness and costs liquidated shall be paid over to the bondholders in cases where they have accepted a compromise settlement. Otherwise the surplus shall be distributed as by law provided. [1951 c 237 § 14. Prior: 1899 c 102 § 12; RRS § 7542.]

General irrigation district laws: Chapter 87.03 RCW.

87.53.150 State's consent to dissolution. Whenever any bonds of the district are held in the state reclamation revolving fund, and, in the opinion of the director of conservation and development, the district is or will be unable to meet its obligations, and that the state's investment can be best preserved by the dissolution of the district the director may give his consent to dissolution under such stipulations and adjustments of the indebtedness as he deems best for the state. [1951 c 237 § 15.]

87.53.200 Disposal of real property—Right of adjacent owners. See RCW 87.03.820.

Chapter 87.56

DISSOLUTION OF INSOLVENT DISTRICTS

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87.56.010	When district insolvent—Election to dissolve.
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87.56.030	Powers of court.
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- 87.56.135 Time for hearing receiver's report to be fixed—
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- 87.56.240 Decree to be filed in each county.
- 87.56.260 Disposal of real property—Right of adjacent owners.
- 87.56.900 Chapter alternative method—Saving.
- 87.56.910 Construction—1925 ex.s. c 124.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

87.56.010 When district insolvent—Election to dissolve. In all instances where fifty percent of the acreage within an irrigation district has been sold to the district on account of delinquent district assessments, and more than one year has elapsed since the sale of said property to the district without redemption by the owners thereof, and the district is unable to raise sufficient revenue to meet its obligations when the same become due and payable, such district shall be deemed insolvent and the district board shall have authority to call an election in the district to determine whether the district shall discontinue operation and dissolve: *Provided*, That in case there are bonds of the district outstanding, written consent of the holders of at least fifty-one percent in amount of such outstanding bonds shall be obtained by the district board before calling said election: *Provided, further*, That if any portion of such outstanding bonds are owned by the state of Washington the board of directors of such district shall give written notice to the director of conservation and development of the intention of the board of directors to call such election, and unless the director of conservation and development shall sign written objection to the calling of such election within ten days after the giving of such notice the state shall be deemed as consenting thereto.

Said election shall be called, shall be conducted and the results canvassed in the same manner substantially provided by law for a bond election in the district. [1931 c 60 § 11; 1925 ex.s. c 124 § 1; RRS § 7543-1.]

Bonds, election for: RCW 87.03.200.

87.56.020 Majority vote—Action for dissolution. If a majority of the votes cast at said election is in favor of dissolution of the district, the district board shall institute an action in the superior court of the county in which the office of the board is located to determine the indebtedness of the district and to adopt a plan of appropriating the available resources of the district to the satisfaction of such indebtedness as in this chapter provided. [1925 ex.s. c 124 § 2; RRS § 7543-2.]

87.56.030 Powers of court. The superior court in the exercise of its jurisdiction in matters of this kind shall have full authority to determine the indebtedness of the district and to determine the status and priorities thereof in accordance with the laws of the state relating to irrigation districts, shall have power to apportion the obligation of such indebtedness against the district and the several lands included therein; the court may award process and cause to come before it all persons whom it may deem necessary to examine and have and cause to be issued all such writs as may be proper or necessary, and do all things proper or incidental to the exercise of such jurisdiction. [1925 ex.s. c 124 § 3; RRS § 7543-3.]

87.56.040 Service of process. Such action shall be one in rem and personal service of process shall not be required to be made on any interested person: *Provided*, That the court shall be authorized in proper instances to order issuance and personal service of process specifying such time for appearance as the court shall require, *And provided further*, That any owner of land within the district or any creditor of the district or their respective attorneys may file with the receiver provided for in this chapter, a written request that his name and address be placed on the receiver's mailing list and thereafter the receiver shall mail to such person at his given address at least ten days' written notice of all subsequent hearings before the court. Personal service of said notice may be made in any instance in lieu of mailing at the option of the receiver. [1925 ex.s. c 124 § 4; RRS § 7543-4.]

87.56.050 Complaint—Contents. The complaint in said action shall recite the holding of the election and the result thereof and shall give in general terms a summary of the district assets and the amount and character of its obligations and the maturities thereof; shall state that the district desires to discontinue operation and dissolve its corporate existence and shall pray that the court take the necessary steps to effect such an object. [1925 ex.s. c 124 § 5; RRS § 7543-5.]

87.56.060 Notice of hearing—Publication. The court shall thereupon fix a time and place for a hearing of the complaint and notice of the hearing shall be published once a week for two successive weeks in a newspaper of general circulation in each county in which any lands in the district are located. [1985 c 469 § 92; 1925 ex.s. c 124 § 6; RRS § 7543-6. FORMER PART OF SECTION: 1925 ex.s. c 124 § 7; RRS § 7543-7, now codified as RCW 87.56.065.]

87.56.065 Hearing—Decree—Receiver. At the time and place fixed in said notice the court shall hear the objections of interested persons and shall determine whether the district is insolvent within the provisions of this chapter and whether the district shall be dissolved. If the court concludes that the district shall not dissolve, he shall so find and dismiss the action. If the court concludes that the district should be dissolved, he shall appoint a receiver with bond conditioned for faithful performance of his duties in such sum as the court shall

determine, to take charge of the district assets and to perform such other duties as may be required by the court. [1925 ex.s. c 124 § 7; RRS § 7543-7. Formerly RCW 87.56.060, part.]

87.56.070 Qualifications, duties, compensation of receiver. The person appointed by the court as receiver shall not be financially interested in the affairs of the district and shall receive such compensation for his services as the court shall fix. The receiver, upon qualifying, shall under the direction of the court, have authority to maintain and operate the district irrigation system during the period of liquidation, to make all necessary contracts for and in behalf of the district, to sue and be sued in his official capacity, and shall upon written consent of any creditor, have full authority to represent said creditor and shall have power to hire such assistance as the court shall direct. Said receiver shall have authority upon order of the court and upon such notice as the court shall fix to issue receiver's certificates which shall constitute a first lien upon the property of the district, and said receiver shall have full authority to execute all necessary instruments of conveyance and do all things necessary and expedient for the carrying out of this chapter. [1925 ex.s. c 124 § 8; RRS § 7543-8.]

87.56.080 Notice to creditors. The receiver immediately after his appointment or within such further time as the court shall fix, shall cause to be published in some newspaper of general circulation in the county where the dissolution proceedings are pending, notice to creditors of the district once a week for two successive weeks. [1985 c 469 § 93; 1925 ex.s. c 124 § 9; RRS § 7543-9. FORMER PART OF SECTION: 1925 ex.s. c 124 § 10; RRS § 7543-10, now codified as RCW 87.56.085.]

87.56.085 Notice to creditors—Contents. The notice shall contain the caption of the dissolution proceedings, shall state that proceedings to dissolve the _____ district, (naming it) have been instituted in the above entitled action, that the undersigned has been appointed as receiver of the district in such action, and has qualified as such officer; that all creditors of the district are required within a period of ninety days from the date of the first publication of said notice (specifying the date) to serve a statement of their claim of indebtedness against the district on the undersigned receiver at his office address below stated and file the same with proof of such service with the clerk of the above entitled court, or the same will be forever barred, and proof by affidavit of the publisher of the publication of such notice shall be filed with the court. [1925 ex.s. c 124 § 10; RRS § 7543-10. Formerly RCW 87.56.080, part.]

Legal publications: Chapter 65.16 RCW.

87.56.090 Unfiled claims barred—Effect of not filing claim of bond lien. If a statement of claim, except that involving a bond lien on district property, be not filed within the time specified in the notice to creditors, said claim shall be barred and no action shall be commenced or permitted thereon. Any holder or owner of a

bond lien on district property who fails to file a statement of his claim with the clerk of the court within the time specified in the notice to creditors, as in this chapter provided, shall be limited in the enforcement of his lien against the district to the district property to which his lien attaches, and shall not be entitled to the benefits of any judgment of the court, if any, in the dissolution proceedings authorizing additional levies of assessments against the lands in the district for the payment of district obligations remaining unpaid after the exhaustion of district property. [1925 ex.s. c 124 § 11; RRS § 7543-11.]

87.56.100 Unmatured claims—Acceleration. The owner or holder of a claim of indebtedness against the district not yet due or matured shall be entitled to serve upon the receiver and file a statement of his claim with the clerk of the court, as in the case of due and matured indebtedness, and the filing of such claim shall constitute an election on the part of the claimant authorizing the court in its discretion to accelerate the maturity of said indebtedness to such date as the court shall determine upon. [1925 ex.s. c 124 § 12; RRS § 7543-12.]

87.56.110 Collection and disbursement of funds. All district funds collected or received by the receiver shall be paid into the county treasurer's office of the county in which the action is pending and shall be disbursed by that office on order of the court, *Provided*, That no claim of indebtedness against the district shall be paid by the county treasurer unless and until the original evidence of indebtedness upon which it is based has been surrendered by the claimant. [1925 ex.s. c 124 § 13; RRS § 7543-13.]

87.56.120 Receiver's report—Plan of liquidation. The receiver within four months after the date of the first publication of notice to creditors or within such other time as the court shall fix, shall file a report with the court setting forth a detailed list of the district property and its itemized value according to his best judgment, also a list of the indebtedness of the district specifying the character, amount and maturities of the indebtedness. In addition, the report shall give a description of the lands within the operation of the district remaining in private ownership, listed according to separate ownerships together with an estimated value of designated improvements on each ownership and of the value of the land and the amount of delinquent taxes, if any, against the land. The report also shall recommend in general terms a plan of liquidating the assets of the district and of appropriating them to the payment of the district indebtedness. [1925 ex.s. c 124 § 14; RRS § 7543-14.]

87.56.130 Time for hearing receiver's report to be fixed—Notice. The court thereupon shall fix a time and place for hearing the receiver's report, notice of the hearing shall be published in a newspaper of general circulation in each county in which lands within the district are situated, and such other newspapers as the

court shall determine once a week for two successive weeks. A copy of the notice shall be posted in the office of the board of directors of the district. [1985 c 469 § 94; 1925 ex.s. c 124 § 15; RRS § 7543-15. FORMER PART OF SECTION: 1925 ex.s. c 124 § 16; RRS § 7543-16, now codified as RCW 87.56.135.]

87.56.135 Time for hearing receiver's report to be fixed—Contents. Said notice shall state in general terms the purpose of the hearing, shall outline briefly the plan of liquidation, shall mention the time and place of the hearing and shall be signed by the receiver and shall give the receiver's office address. [1925 ex.s. c 124 § 16; RRS § 7543-16. Formerly RCW 87.56.130, part.]

87.56.140 Objections to report. Any interested person shall have the right to file with the clerk of the court and serve upon the receiver at least two days before the time of the hearing, written objections to the report of the receiver, specifying the interest of the objector in the proceedings, the nature of the objection made and the name and address of the objector or his attorney. [1925 ex.s. c 124 § 17; RRS § 7543-17. FORMER PART OF SECTION: 1925 ex.s. c 124 § 18; RRS § 7543-18, now codified as RCW 87.56.145.]

87.56.145 Objections to report—Fee. The clerk of the superior court shall be entitled to a fee of one dollar for each objector represented in the written objections filed in his office, and no other fee shall be required of the objectors by said office. [1925 ex.s. c 124 § 18; RRS § 7543-18. Formerly RCW 87.56.140, part.]

87.56.150 Hearing—Court's powers and duties. At the time and place stated in the notice of the hearing on the receiver's report, the court shall consider the objections, if any, made to the receiver's report; shall receive such material evidence as shall be offered for or against said report, shall have power to approve, modify or disapprove the same, to correct any errors therein, to order a further or additional report and to adopt the plan submitted or any other plan of liquidation, which under the evidence received may seem proper. The court may continue or adjourn the hearing for further evidence or for any other substantial reason. [1925 ex.s. c 124 § 19; RRS § 7543-19. FORMER PART OF SECTION: 1925 ex.s. c 124 § 20; RRS § 7543-20, now codified as RCW 87.56.155.]

87.56.155 Decree—Plan of liquidation. Upon full consideration of all the evidence submitted for or against the report of the receiver, or any modification thereof, the court shall determine the indebtedness of the district, its several classes and portions and the status and priority thereof and shall adopt a plan of liquidation. Said plan shall be fully outlined in writing by the receiver and included in the decree of the court determining the matter. [1925 ex.s. c 124 § 20; RRS § 7543-20. Formerly RCW 87.56.150, part.]

87.56.160 Liquidation—Assessments to pay remaining debts. In the execution of a plan of liquidation,

the court shall have authority to order the sale of any or all of the district property or the exchange of any of the district property for any evidence of district indebtedness in accordance with the rights of the district and of all the creditors concerned, and if upon the exhaustion of the district property in the payment of the district indebtedness including the costs of dissolution and receivership proceedings, any district indebtedness remain undischarged, the court shall have authority to order district assessments against the lands included within the operation of the district to continue to be made in accordance with the rights of the persons interested in the manner provided by law to pay the remaining indebtedness until sufficient revenue has been raised to pay fully all the obligations of the district. [1925 ex.s. c 124 § 21; RRS § 7543-21.]

Assessments, levies: RCW 87.03.240 through 87.03.305.

87.56.170 Judgment upon stipulation—Payment. Upon stipulation of the owners of lands within the district, and holders of bond liens against said lands, and the district creditors concerned, the court shall have authority in such proceedings in lieu of the plan of liquidation set forth in RCW 87.56.160, to determine the amount of the district indebtedness remaining after the exhaustion of the district property and the proportion thereof which each ownership of land within the district shall be obligated to pay, and judgment may be rendered in favor of the respective creditors against the several lands concerned. Said judgment may in the discretion of the court provide that the payment thereof shall be made by the landowners in one or more annual installments not to exceed ten in all with annual interest on all unpaid installments at such rate as the court shall fix not in excess of the rate to which the respective creditors may be entitled in their original evidences of indebtedness. [1925 ex.s. c 124 § 22; RRS § 7543-22. FORMER PART OF SECTION: 1925 ex.s. c 124 § 27; RRS § 7543-27, now codified as RCW 87.56.205.]

Prerequisite to judgment upon stipulation: RCW 87.56.205.

87.56.180 Trustee for creditors—Bond—Duties. The judgment shall also name a trustee to be nominated by the creditors representing a majority of the indebtedness who shall give bond conditioned for the faithful performance of his duties and the strict accounting of all funds received by him in such amount as the court shall determine, and who shall have authority to receive payment on account of said judgment and to satisfy said judgment against the several lands at the time payment thereon is made by the landowners in proportion to the amount of said payment. When any landowner shall make full payment of the amount of the judgment apportioned against his land, he shall be entitled to full satisfaction thereof of record. [1925 ex.s. c 124 § 23; RRS § 7543-23.]

87.56.190 Enforcement of judgment. In case any landowner fails to pay the judgment against his land or any installment thereof, when the same shall become due and payable, said judgment may be enforced by the

trustee named in the decree in the manner provided by law for the enforcement of judgments in the superior court, and the costs of execution and sale shall be charged to the defaulting land. [1925 ex.s. c 124 § 24; RRS § 7543–24.]

Enforcement of judgments: Title 6 RCW.

87.56.200 Distribution of funds—Court to retain jurisdiction. The trustee named in the decree shall make distribution of all funds collected on account of said decree in such manner as the creditors shall agree upon, or in case of disagreement, then in such manner as the court shall direct, and jurisdiction of the court in the dissolution proceedings shall continue until full disbursement of funds collected on account of said judgment has been made to the judgment creditors. [1925 ex.s. c 124 § 25; RRS § 7543–25.]

87.56.203 Compensation of trustee. The trustee named in the decree shall receive such compensation for his services as the court shall determine to be paid at such times as the court shall fix from funds collected on account of said judgment. [1925 ex.s. c 124 § 26; RRS § 7543–26. Formerly RCW 87.56.220.]

87.56.205 Judgment upon stipulation—Prerequisites. Before the court shall enter judgment upon stipulation of the parties as in this chapter provided, the creditors concerned shall file all evidences of district indebtedness held by them into the registry of the court to be held subject to the order of the court. [1925 ex.s. c 124 § 27; RRS § 7543–27. Formerly RCW 87.56.170, part.]

Judgment upon stipulation—Payment: RCW 87.56.170.

87.56.210 Judgment upon stipulation—Evidences of indebtedness to be canceled. If the judgment rendered by the court, upon stipulation, be not appealed from as in this chapter provided and the time for appeal has expired, or having been appealed from has been finally determined upon appeal, the court shall upon application of the receiver, order all evidences of indebtedness filed in the registry of the court under the provisions relating to judgment upon stipulation to be delivered to the office of the county treasurer, who shall have authority and it shall be his duty to cancel the same, and said evidences of indebtedness shall thereafter cease to be obligations of the district, and the district thereafter shall be discharged of said indebtedness. [1925 ex.s. c 124 § 28; RRS § 7543–28.]

87.56.225 Appeal. Any interested person feeling aggrieved at the judgment of the superior court dismissing the proceedings or determining the indebtedness of the district and the status and priority thereof and determining the plan of liquidation, may appeal from such judgment to the supreme court or the court of appeals in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof. [1971 c 81 § 174;

1925 ex.s. c 124 § 29; RRS § 7543–29. Formerly RCW 87.56.250.]

87.56.230 Final report of receiver—Apportionment of excess assets—Decree of dissolution. When all district indebtedness has been discharged as in this chapter provided, and all expenses of the dissolution proceedings have been paid, the receiver shall report such fact to the court with a full account of all assets and moneys received and disbursed. The court shall examine said report and if found satisfactory shall approve the same; shall order any funds remaining after the payment of all indebtedness apportioned to the several owners of land within the district in accordance with the ratio of the last assessment roll of the district, and shall enter a decree dissolving and annulling the district, which shall thereafter cease to exist as a corporate entity. [1925 ex.s. c 124 § 30; RRS § 7543–30.]

87.56.240 Decree to be filed in each county. A copy of said decree shall be filed for record forthwith by the receiver in the office of the county auditor and in the office of the county assessor, of the counties in which any of the lands within the district are situated, and said decree shall be recorded by each of said offices without charge of fee. [1925 ex.s. c 124 § 31; RRS § 7543–31.]

87.56.260 Disposal of real property—Right of adjacent owners. See RCW 87.03.820.

87.56.900 Chapter alternative method—Saving. This chapter is designed to provide an alternative method for the dissolution of irrigation districts and shall not be deemed to repeal any other statute or statutes. [1925 ex.s. c 124 § 32; RRS § 7543–32.]

87.56.910 Construction—1925 ex.s. c 124. Nothing in this chapter contained shall be construed to enlarge, abridge, modify or otherwise affect the rights, privileges or obligations of solvent districts, the lands therein or creditors thereof. [1925 ex.s. c 124 § 33; RRS § 7543–33.]

Chapter 87.64

ADJUSTMENT OF IRRIGATION, DIKING, AND DRAINAGE DISTRICT INDEBTEDNESS

Sections

87.64.010	State authorized to adjust indebtedness—When state owns entire bond issue.
87.64.020	State authorized to adjust indebtedness—When state owns part of bond issue.
87.64.040	Claim for moneys expended may be settled and compromised.
87.64.060	Cancellation of district's assessments and taxes.
87.64.070	Powers of district.

87.64.010 State authorized to adjust indebtedness—When state owns entire bond issue. Whenever the state shall now or hereafter own, the entire issue of the bonds of any irrigation, diking or drainage district,

and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations to the state as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments, or by the exchange of the bonds held by the state for refunding bonds of such district issued as in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for the same or a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the remaining bonds held by the state for such refunding bonds as in his judgment will be for the best interest of the state. [1983 c 167 § 243; 1941 c 39 § 1; 1929 c 121 § 2; Rem. Supp. 1941 § 7530-41. FORMER PART OF SECTION: 1941 c 39 § 3, part, last am'ds 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42, part, now codified in RCW 87.64.020.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Dissolution: Chapter 87.53 RCW.

Refunding bonds: Chapters 87.19 and 87.22 RCW.

87.64.020 State authorized to adjust indebtedness—When state owns part of bond issue. Whenever the state shall, now or hereafter, own a portion of the bonds of any irrigation, diking or drainage district, and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments or by exchanging the bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding, or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the remaining bonds held by the state for such refunding bonds as in his judgment will be for the

best interest of the state: *Provided*, That the owners of at least ninety percent of all the other bonds of said district shall make and execute the same arrangement with the district: *And provided further*, That when, in addition to owning a portion of the first issue of bonds of any such irrigation, diking or drainage district, the state also owns all the outstanding second issue of bonds of such district, the director of ecology shall be and he is hereby authorized and empowered to surrender and cancel said second issue of bonds held by the state upon whatsoever terms and conditions he shall deem to the best interest of the state: *And provided further*, That whenever the owners of at least ninety percent of all other bonds of such district and/or other evidences of indebtedness are willing to release their existing obligations against said district and to substitute therefor a contract to pay such existing indebtedness in whole or in part from the proceeds of the sale of lands owned by the district at the time of such settlement, or acquired by the district through levies then existing, the director of ecology shall be and he is hereby authorized and empowered to cancel the bonds held by the state upon whatsoever terms that he shall deem most beneficial for the state, or if deemed beneficial to the state, he may release the state's bonds and join with the other holders in the above mentioned contract for the sale of the district land as hereinbefore stated: *And provided further*, That the director of ecology be and he is hereby authorized to accept in any settlement made under this chapter, refunding bonds of any irrigation district that may be issued in accordance with chapter 87.22 RCW, or any amendment thereto, and he is hereby authorized, when in his judgment it is to the interest of the state, to participate in the refunding of bonds of an irrigation district held under said chapter 87.22 RCW, or any amendment thereto. [1983 c 167 § 244; 1941 c 39 § 3; 1931 c 43 § 1; 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42. Formerly RCW 87.64.010, part, 87.64.020 and 87.64.030.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

87.64.040 Claim for moneys expended may be settled and compromised. Whenever the department of conservation and development shall have heretofore entered, or shall hereafter enter, into a contract with an irrigation, diking or drainage district and shall have expended moneys under said contract, and said district shall be indebted to the state for the moneys so expended, and in the judgment of the director of conservation and development said district shall have not received benefits equal to the amount of said indebtedness, the director of conservation and development shall be and is hereby authorized and empowered to settle and compromise the claim of the state against said district upon such terms and for such an amount as he shall deem fair and just to the state and the district. [1941 c 39 § 2; 1929 c 121 § 4; Rem. Supp. 1941 § 7530-43.]

87.64.060 Cancellation of district's assessments and taxes. Whenever the director of conservation and development shall find any irrigation district is, or will be

unable to meet its obligations and that refunding operations under this chapter are necessary, and that as a part of such refunding operations the cancellation of assessments and county taxes on the irrigation system and the irrigable lands in such district then delinquent, is necessary, the board of county commissioners of the county in which such irrigation district is situated may, upon request of the director of conservation and development, cancel any or all delinquent assessments and county taxes levied upon the irrigable lands in such district and all county taxes levied upon the irrigation system of such district, if such board shall find that such irrigation district is or will be unable to meet its obligations and such refunding operations are necessary, of which the report of the director of conservation and development shall be prima facie evidence. [1929 c 121 § 5; RRS § 7530-44.]

87.64.070 Powers of district. Any irrigation, diking or drainage district now or hereafter coming within the provisions of this chapter shall be and it is hereby authorized and empowered to enter into contracts, issue evidences of indebtedness and otherwise carry out on its part the provisions of this chapter. [1941 c 39 § 4; Rem. Supp. 1941 § 7530-45. Formerly RCW 87.64.050.]

Chapter 87.68

DISTRICTS UNDER CONTRACT WITH UNITED STATES

Sections

87.68.010	Resolution to fix time of paying assessments.
87.68.020	Discount on advance payments.
87.68.030	Meeting of board of equalization—Resolution—Notice.
87.68.040	Assessment rolls, resolution, to county treasurers.
87.68.050	Payment and collection of assessments.
87.68.060	Certain elections—Districts of two hundred thousand acres—Notice of election.
87.68.070	Deposit of funds in bank of board of control's choice.
87.68.090	Security for deposits.
87.68.100	Audit of board's records.
87.68.110	Costs, assessments for—Special funds—Investment of.
87.68.120	Contract for use of canal.
87.68.130	Contract with board to operate works.
87.68.140	Disposal of property authorized—Board may sue and be sued.

Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of: RCW 87.03.445.

Board's powers and duties generally (contracts with state and United States): RCW 87.03.140.

Bonds, election for (when contracts with United States): RCW 87.03.200.

Cancellation of assessments due United States—Procedure: RCW 87.03.280.

Certain purposes for which district may be formed: RCW 87.03.010(5).

Indemnity to state on land settlement contracts: Chapter 87.48 RCW.

Levies and assessments (for state or United States): RCW 87.03.260 through 87.03.280.

L.I.D.'s—Contract with state or United States for local improvement work: RCW 87.03.520.

Payment of bonds and interest (to state and United States): RCW 87.03.215.

Proposed works—Reclamation service may make findings: RCW 87.03.185.

Rights of federal agencies as to certain district bonds: RCW 87.03.235.

87.68.010 Resolution to fix time of paying assessments. At the option of the board of directors assessments of irrigation districts in this state under contract with the United States involving payments thereto for the development and operation of their respective projects shall be payable on or before December 31st of the year in which the assessment is levied and upon the resolution of the board of directors of the district to that effect, adopted and entered at a regular meeting thereof not later than the second Tuesday of September of the year in which the levy is made. Such resolution shall thereafter remain in full force and effect until revoked by the board. [1941 c 141 § 1; Rem. Supp. 1941 § 7525-13.]

Severability—1941 c 141: "If any section, provision or part of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, provision, or part thereof not adjudged invalid or unconstitutional." [1941 c 141 § 7.]

Construction—1941 c 141: "Nothing in this act contained shall be held or construed to modify, abridge or extend any other law or provision thereof relating to irrigation district assessments or the collection thereof except as herein provided." [1941 c 141 § 6.]

87.68.020 Discount on advance payments. In the event of the adoption and entering of such resolution by the board of directors, a person paying all or one-half of the current district assessment against any tract of land on or before December 31st of the year in which said assessment is levied shall be entitled to a discount of ten percent of said assessment if paid in full and ten percent of one-half of said assessment if one-half only is paid. In the event one-half of said assessment is paid on or before December 31st as aforesaid, the payer of the second half of said assessment shall be entitled to a discount of ten percent of the amount of said second half of said assessment if the same is paid on or before May 31st, next following the December payment. No discount shall be made for payment of district assessments except as herein specifically provided. [1941 c 141 § 2; Rem. Supp. 1941 § 7525-14.]

Severability—Construction—1941 c 141: See notes following RCW 87.68.010.

87.68.030 Meeting of board of equalization—Resolution—Notice. Said board of directors shall adopt and enter a resolution fixing the day, hour, and place when and where the board will convene as a board of equalization to equalize the assessment roll and a copy of the resolution adopting December 31st as the day on or before which assessments shall be paid, together with a notice signed by the secretary stating the day, hour, and place of the meeting of the board of equalization, shall be published for two consecutive weekly issues prior to the day of the convening of the board of equalization in some newspaper of general circulation in the district to be previously designated by the

district board. [1941 c 141 § 3; Rem. Supp. 1941 § 7525-15.]

Severability—Construction—1941 c 141: See notes following RCW 87.68.010.

87.68.040 Assessment rolls, resolution, to county treasurers. The officers of said district shall cause said assessments to be made, levied and equalized and the assessment roll and any parts thereof to be delivered to the proper county treasurers on or before December 10th of said year and upon receipt of a certified copy of said resolution adopting December 31st as the day on or before which assessments shall be paid, the county officers charged with the collection of irrigation district assessments shall be authorized and it shall be their duty respectively to collect the same in accordance with the provisions of RCW 87.68.010 through 87.68.050 and of said resolution and to account for collections in the manner provided by the irrigation district law. [1941 c 141 § 4; Rem. Supp. 1941 § 7525-16.]

Severability—Construction—1941 c 141: See notes following RCW 87.68.010.

Assessments and levies: RCW 87.03.240 through 87.03.305.

Claims, how paid, etc.: RCW 87.03.440.

87.68.050 Payment and collection of assessments. Irrigation district assessments levied and becoming payable under the provisions of RCW 87.68.010 through 87.68.050 shall be payable on and after December 10th next following the levy and except as in RCW 87.68.010 through 87.68.050 otherwise provided shall become delinquent, shall be collected by the same officials and lands charged with said assessments shall be sold when delinquent; all at the same times in the same manner with the same kind and length of notice and with the same force, effect, obligations, and privileges as provided by the irrigation district law generally for the collection of assessments, and for the sale and redemption of lands charged with delinquent district assessments. [1941 c 141 § 5; Rem. Supp. 1941 § 7525-17.]

Severability—Construction—1941 c 141: See notes following RCW 87.68.010.

Assessments, sale, redemption: RCW 87.03.240 through 87.03.475.

87.68.060 Certain elections—Districts of two hundred thousand acres—Notice of election. In any election called and held in an irrigation district organized and existing under the laws of this state, comprising two hundred thousand or more acres of land within its boundaries, for the purpose of voting on any proposed contract between the district and the United States or any agency thereof where the proposed contract is to include a provision in accordance with the fourth proviso in section 1(b) of the act of congress of May 27, 1937 (50 Stat. 208), the notice of said election shall state, in addition to the other matters and things required by law relating to elections in such districts, that the proposed contract shall include a provision in accordance with the fourth proviso in section 1(b) of the act of congress of May 27, 1937 (50 Stat. 208), and shall also set forth the

provisions of section 1(a) and (b) of said federal act. [1939 c 190 § 1; RRS § 7402-283.]

Qualification of voters: RCW 87.03.045.

87.68.070 Deposit of funds in bank of board of control's choice. Funds in the custody of the board of control of the Sunnyside Division, Yakima Project, or any similar board created or operated by contract or otherwise under or pursuant to the federal reclamation laws, or acting as operating agent for the United States and/or irrigation districts of this state or of other states, may be deposited on general deposit in any one or more banks in this state which such board of control may designate. All such deposits shall be made in the name of the board and be subject to payment on demand on the check of any officer or agent fully authorized and designated by such board. The board of control of the Sunnyside Division, Yakima Project, referred to herein, is the board of control created by the respective contracts entered into by and between the United States of America and the Sunnyside Valley Irrigation District and other irrigation districts of the Sunnyside Division of the Yakima Project, in the state of Washington, under the provisions of the act of congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all generally referred to as the federal reclamation laws. [1945 c 163 § 1; Rem. Supp. 1945 § 7525-40. FORMER PART OF SECTION: 1947 c 265 § 2, part; 1945 c 163 § 7, part; Rem. Supp. 1945 § 7525-46, part, now codified in RCW 87.68.140. Formerly RCW 87.68.070 and 87.68.080.]

87.68.090 Security for deposits. Upon the designation of any bank by the board of control as in RCW 87.68.070 through 87.68.140 provided, the bank shall furnish security for any deposits by mortgage, pledge or hypothecation of bank assets or otherwise in such manner as may be agreed upon between the board of control and the bank, or in lieu thereof, the bank shall file with the board of control a surety bond to such board of control, properly executed by some reliable surety company qualified under the laws of this state to do business therein, in the maximum amount of deposits designated by said board to be carried in such bank, conditioned for the prompt and faithful payment thereof on checks drawn by the officer or agent fully authorized and designated by such board. [1945 c 163 § 2; Rem. Supp. 1945 § 7525-41.]

87.68.100 Audit of board's records. The state auditor shall audit the books, records and affairs of the board of control every two years, or at such other times as the board shall request, and the costs of the audit shall be paid by said board. [1945 c 163 § 3; Rem. Supp. 1945 § 7525-42.]

87.68.110 Costs, assessments for—Special funds—Investment of. Each irrigation district which has or hereafter may enter into a contract with the United States providing for the operation and maintenance, by means of a board of control, of irrigation

works used in common with other districts, shall include in the annual levy of assessments a sufficient amount to pay the annual estimated pro rata proportion of the costs chargeable to such district and also such reserve fund as may be fixed by the contract: *Provided*, That any district may appropriate moneys from other funds to pay said costs.

When assessments are paid to the county treasurer for the board of control fund, they shall be deposited in a special fund, known as the "Board of Control Fund," and when assessments are paid to the county treasurer for the board of control reserve fund they shall be deposited in a special fund known as the "Board of Control Reserve Fund," and said funds may be disbursed only upon vouchers approved by a majority of the voting power of the members of the board of control, and the county auditor shall issue warrants for the payments of such claims which shall be payable out of the funds on which the same are drawn.

Any moneys in the "Board of Control Reserve Fund," when so requested by the board of control, shall be invested by the treasurer of said county and under the direction of said board of control in U.S. bonds or bonds of the state or any bonds pronounced by the treasurer of the state as valid securities for the deposit of public funds. [1951 c 158 § 1; 1947 c 265 § 1; 1945 c 163 § 4; Rem. Supp. 1947 § 7525-43.]

87.68.120 Contract for use of canal. Any irrigation district, city, town, or other water user or users whose lands are irrigated by water carried in works transferred by the United States to a board of control, are hereby authorized to enter into contract with another irrigation district whose lands are irrigated by water carried in the same canal to operate and maintain the main canal and other works known as transferred works, and to pay such district in a lump sum its pro rata proportion of the cost of maintenance and operation of such transferred works: *Provided*, That the amount said pro rata proportion may be estimated and such estimated amount paid at the beginning of any year, and at the end of the year the board shall after determining the true pro rata amount of such user's cost, require such user to pay the balance, if any, of said true pro rata amount. [1945 c 163 § 5; Rem. Supp. 1945 § 7525-44.]

87.68.130 Contract with board to operate works. Any irrigation district, city, town, or other water user or users whose lands are irrigated by water carried in works transferred by the United States to a board of control are hereby authorized to enter into contract with the board of control for the operation and maintenance of the irrigation works within the district by the board of control and to pay such district in a lump sum the cost of maintenance and operation of such works within the district: *Provided*, That the amount of the cost of operation of the works in the district may be estimated and the estimated amount paid to the board. At the end of each year the board shall, after determining the true amount of such costs of operation, require such district

to pay the balance, if any, of such true amount. [1945 c 163 § 6; Rem. Supp. 1945 § 7525-45.]

87.68.140 Disposal of property authorized—Board may sue and be sued. Any such board of control shall have authority to be exercised by a majority of the voting power of the board to sell at such price and upon such terms as may be fixed by said board and any real or personal property owned by the board of control and to authorize the execution by the president and secretary of said board of a good and sufficient conveyance therefor, and said board may sue or be sued in any of the courts of this state without joining the person, corporation or district for whose benefit the suit may be prosecuted or defended. [1947 c 265 § 2; 1945 c 163 § 7; Rem. Supp. 1947 § 7525-46. Formerly RCW 87.68.070, part and 87.68.140.]

Rules of court: Cf. Superior Court Civil Rules.

Chapter 87.76

ASSOCIATION OF IRRIGATION DISTRICTS

Sections

87.76.010	Coordination of programs—Reports.
87.76.020	Coordinating agency—Expense, how defrayed.
87.76.030	General powers of directors.
87.76.040	Cooperation with other agencies authorized—Financial contributions.

87.76.010 Coordination of programs—Reports. The directors of the several irrigation districts in the state shall take such action as they deem necessary to effect coordination of their common programs for the economical and efficient operation of their districts and the reclamation of lands therein, and prepare reports annually for such operations. [1947 c 193 § 1; Rem. Supp. 1947 § 7505-10.]

87.76.020 Coordinating agency—Expense, how defrayed. The directors of such irrigation districts may designate a state-wide association dedicated to the promotion of irrigated agriculture as a coordinating agency in the execution of the duties imposed by this chapter, and pay dues or assessments, or both, to the association from district expense funds, and the several districts may levy assessments against the lands therein for this purpose. Such dues and assessments shall be paid only on vouchers approved by the board of directors of the contributing district in the manner provided for the approval of district vouchers generally. The total of such voucher claims for any district in any calendar year shall not exceed two percent of the total amount or its equivalent of the expense fund levy of the district for that year. [1987 c 124 § 1; 1947 c 193 § 2; Rem. Supp. 1947 § 7505-11.]

Claims, how paid: RCW 87.03.440.

Power as to incurring indebtedness: RCW 87.03.475.

87.76.030 General powers of directors. The board of directors of the several districts may effect the state organization herein contemplated and take such further

and other action in behalf of their respective districts as they deem necessary to carry out the intent of this chapter, including support of and attendance at such meetings as may be required to promote and perfect the organization and to effect its purposes. [1947 c 193 § 3; Rem. Supp. 1947 § 7505-12.]

87.76.040 Cooperation with other agencies authorized—Financial contributions. To avoid duplication of effort the state association may, in the discretion of its officers, affiliate and cooperate with other organizations and agencies engaged in the furthering of reclamation of lands in the state and make financial contributions to them for such purpose. [1987 c 124 § 2; 1951 c 202 § 1; 1949 c 41 § 1; Rem. Supp. 1949 § 7505-13.]

Chapter 87.80

JOINT CONTROL OF IRRIGATION DISTRICTS

Sections

- 87.80.010 Board of joint control authorized.
- 87.80.020 Petition to create board required—Signatures necessary.
- 87.80.030 Form and contents of petition—Map.
- 87.80.040 Petition filed if regular in form—Hearing set.
- 87.80.050 Notice of hearing.
- 87.80.060 Form and contents of notice.
- 87.80.070 Conduct and scope of hearing—Independent investigation authorized.
- 87.80.090 Creation of board of joint control—Resolution filed.
- 87.80.100 Principal office, oaths, terms, of board—Representation on board.
- 87.80.110 Organization of board—Meetings—Quorum.
- 87.80.120 Compensation of board members and employees.
- 87.80.130 Powers of board of joint control—Limitation on.
- 87.80.140 Annual budget of board—Hearing set—Notice.
- 87.80.150 Hearing and adoption of budget.
- 87.80.160 District levy to include budget apportionment.
- 87.80.170 Levy by board if district fails to levy.
- 87.80.180 Budget apportionment is special assessment and lien on nondistrict lands.
- 87.80.190 Control fund created—Deposits and remittances.
- 87.80.200 Payments from control fund.
- 87.80.210 Chapter does not apply to certain districts without consent.

87.80.010 Board of joint control authorized. A board of joint control to administer the operation, maintenance, betterments and regulations of the water works, main, and branch canals, if any, and water lines and other water facilities of two or more irrigation districts and others which are the owners of water rights having the same natural source and which use the same common works for the diversion and transportation of all or any part of their respective irrigation water supplies, may be created as hereinafter provided. [1949 c 56 § 1; Rem. Supp. 1949 § 7505-20.]

87.80.020 Petition to create board required—Signatures necessary. For the purpose of creating such board of joint control a petition signed by three or more owners of water rights having the same natural source of water and which owners use common works for the diversion and transportation of all or any part of their respective irrigation water supplies, as aforesaid, shall be

filed with the board of county commissioners of the county in which the greater part of the land irrigated from said source of water supply is situated. No irrigation district shall be represented on said petition without the signatures of the entire membership of its board of directors. [1949 c 56 § 2; Rem. Supp. 1949 § 7505-21.]

87.80.030 Form and contents of petition—Map. The petition for the creation of a board of joint control shall be addressed to the board of county commissioners, shall describe generally the water works, main, and branch canals, if any, and water lines and other water facilities involved, giving them their local names, if any they have, and shall show generally the physical relationship of the lands being watered from the common use of said water works, canals, lines and other water facilities: *Provided*, That lands included in any irrigation district involved need not be described individually but shall be included by stating the name of the irrigation district and all the irrigable lands in the irrigation district named shall by that method be deemed to be involved unless otherwise specifically stated in the petition. The petition shall also state generally the reasons for the creation of a board of joint control and any other matter the petitioners deem material and shall allege that it is in the public interest and to the benefit of all the owners of the lands receiving water from said common source, that said board of joint control be created and pray that the board of county commissioners consider said petition and take the necessary steps provided by law for the creation of a board of joint control. The petition shall be accompanied by a map showing the general location of the water works, main, and branch canals, if any, and water lines and other water facilities. [1949 c 56 § 3; Rem. Supp. 1949 § 7505-22.]

87.80.040 Petition filed if regular in form—Hearing set. Upon the filing of a petition for the creation of a board of joint control the board of county commissioners at a regular meeting or at a special meeting shall examine the petition and, if found regular in form, shall accept the same for filing, and shall fix a time and place for hearing said petition. [1949 c 56 § 4; Rem. Supp. 1949 § 7505-23.]

87.80.050 Notice of hearing. Notice of the hearing on said petition shall be given by the clerk of the board of county commissioners by publishing the same, at the cost of the board of control, if created, otherwise at the cost of the petitioners, in the official newspaper of the county in at least three weekly issues thereof: *Provided*, That the time of the hearing shall not be less than thirty days from the date of the first publication of said notice. A copy of said notice shall be posted at the regular meeting place of the board of directors of each irrigation district concerned in the granting or denial of said petition and a copy of the notice shall be mailed to the department of conservation and development at Olympia at least thirty days prior to the day of said hearing. [1949 c 56 § 5; Rem. Supp. 1949 § 7505-24.]

87.80.060 Form and contents of notice. The notice of the hearing on said petition shall state that a petition praying for the creation of a board of joint control to administer the operation, maintenance, betterments and regulation of the water works, main, and branch canals, if any, and water lines, naming them, if named in the petition, and other water facilities involved, has been filed with the board of county commissioners of the county (naming it); that said board of joint control, if it is created, will have authority to provide for assessments to carry out the objects of its creation against the irrigable lands in the several irrigation districts (naming them) and against any other lands involved if set out in the petition (describing them); shall state the day, hour, and place of hearing on the petition; shall state that any person interested in the creation of said board of joint control may appear on or before the day of hearing on said petition, and show cause in writing, if any he has, why the same should not be granted, and the notice shall be over the name of the clerk of the board of county commissioners. [1949 c 56 § 6; Rem. Supp. 1949 § 7505-25.]

87.80.070 Conduct and scope of hearing—Independent investigation authorized. The board of county commissioners, at the time and place mentioned in the notice of hearing or at the time or times to which the hearing on said petition may be adjourned, shall proceed to hear the petition and all evidence submitted against and in support of the same. The board of county commissioners shall have full authority to adjourn the hearing from time to time not exceeding four weeks in all and to grant or reject the petition, and to determine the matter; any irregularities or omissions in the allegations of the petition shall not be held or construed to deprive the board of county commissioners of jurisdiction and authority to consider and determine the matter of any such petition accepted by it for consideration and said board of county commissioners shall have full authority to make such independent investigation of the matter of such petition as it shall deem advisable and to base its judgment on such independent investigation as well as upon the evidence submitted for and against the petition upon a hearing thereon as hereinafter provided. [1949 c 56 § 7; Rem. Supp. 1949 § 7505-26. Formerly RCW 87.80.070 and 87.80.080.]

87.80.090 Creation of board of joint control—Resolution filed. If the board of county commissioners determine that the creation of a board of joint control is in the public interest and is of benefit to the lands concerned, it shall so find and adopt a resolution creating the board of joint control, designating it (give [giving] the name of county) County Joint Control Board No. (specify number), and the county board at the same time shall appoint the president of the board of directors of each irrigation district involved and the resident owner of each individual tract of land involved or such other person as any said landowner shall designate in writing, as the first members of said board of joint control and said board of joint control shall consist of said

membership. A copy of said resolution creating the board of joint control certified by the clerk of the county board shall be filed with the county assessor of the county in which the board of joint control was created and with the county assessor in any other county in the state in which any lands involved are situated, within five days after said resolution is adopted. [1949 c 56 § 8; Rem. Supp. 1949 § 7505-27.]

87.80.100 Principal office, oaths, terms, of board—Representation on board. The principal office and place of business of the board of joint control shall be at a place to be designated by the board in the county in which the board was created. Each member of the board before entering on the duties of his office shall subscribe a written oath for the faithful discharge of his duties as such member and file the same with the county clerk of said county. The filing of such oath shall be without clerk's fee. The term of office of members of the board shall be for one year or fraction thereof ending on the first Monday in March next following their selection and until their respective successors are selected as herein provided. The term of the first members of the board shall also be as above stated. In January of each year the board of directors of each irrigation district concerned shall designate in writing and deliver to the board of joint control, the name of the person who shall represent the district on the board of joint control for the ensuing year. Likewise, the owners of land concerned but not in the irrigation district, shall each designate in writing a person to represent their respective lands and file the same with the board of joint control and that board shall select from the list of persons so filed, one person to represent the lands outside any irrigation district on the board of joint control for the ensuing year. The persons so selected as aforesaid shall constitute the board of joint control for such year and until their respective successors are selected and have qualified. Any irrigation district or owner of land not in a district as the case may be, which fails to designate its or his representative and to file the same as above provided shall not be entitled to representation on the board unless and until such requirements are complied with. [1949 c 56 § 9; Rem. Supp. 1949 § 7505-28.]

87.80.110 Organization of board—Meetings—Quorum. In the month of March in each year the members of the board of joint control shall meet and organize as a board for the ensuing year and shall select a chairman from their number and appoint a secretary who may, but need not, be a member of the board, and who shall keep a record of their proceedings, and perform such other duties as the board shall prescribe. Business of the board shall be transacted at meetings thereof and a majority of the qualified membership of the board shall constitute a quorum for the transaction of business and in all matters requiring action by the board there shall be a concurrence of at least a majority of the members present. All meetings of the board shall be public. [1949 c 56 § 10; Rem. Supp. 1949 § 7505-29.]

87.80.120 Compensation of board members and employees. Each member of the board of joint control shall receive not to exceed ten dollars per day in attending meetings of the board to be determined by the board, and such compensation, not exceeding ten dollars per day for other services previously authorized and rendered the board, and in addition thereto, the members shall receive necessary expenses in attending meetings or when otherwise engaged on the business of the board. The board shall fix the compensation to be paid the secretary and all other agents and employees of the board. [1949 c 56 § 11; Rem. Supp. 1949 § 7505-30.]

87.80.130 Powers of board of joint control—Limitation on. A board of joint control created under the provisions of this chapter shall have full authority to enter into and perform any and all necessary contracts, to appoint and employ and discharge the necessary officers, agents and employees, to sue and be sued as a board but without personal liability of the members thereof in any and all matters in which all the irrigation districts and others represented on the board as a whole have a common interest without making such districts and other parties to the suit to represent said districts and others in all matters of common interest as a whole within the scope of this chapter and to do any and all lawful acts required and expedient to carry out the purposes of this chapter: *Provided*, That nothing in this chapter contained shall be held or construed to give the board of joint control authority to abridge, increase or modify the water rights of any irrigation district or others represented on the board or the privileges or burdens incident thereto or connected therewith and in the apportionment of expenses and outlays chargeable to the respective irrigation districts and others, the board shall be bound by their respective water rights and appurtenant privileges and burdens. [1949 c 56 § 12; Rem. Supp. 1949 § 7505-31.]

87.80.140 Annual budget of board—Hearing set—Notice. In September of each year the board of joint control shall prepare a budget of its estimated expenses and outlay for the ensuing calendar year and the apportionment thereof chargeable against the several irrigation districts and others coming within the jurisdiction of the board and shall fix a time and place when said budget shall be considered and adopted by the board. Notice of the hearing of the budget signed by the secretary of the board shall be published in at least two weekly issues of a newspaper of general circulation in each county in which any lands chargeable with said expense and outlay of the board are situated. The date of the first publication of such notice shall be not less than ten days prior to the day of said hearing. [1949 c 56 § 13; Rem. Supp. 1949 § 7505-32.]

87.80.150 Hearing and adoption of budget. At the time and place stated in said notice the board shall meet and consider any objections and suggestions as to the items of said budget which may be offered by any interested person and may adjourn its meeting from time to

time not exceeding ten days in all and shall finally determine the same and adopt a budget for its operations for the ensuing calendar year. [1949 c 56 § 14; Rem. Supp. 1949 § 7505-33.]

87.80.160 District levy to include budget apportionment. Immediately after final adoption of the budget the secretary of the board shall mail or deliver a copy thereof showing the apportionment of the charge to each irrigation district, to the secretary of each irrigation district coming under the jurisdiction of the board of joint control and it shall be the duty of each irrigation district to include in its levy for the ensuing year, the amount apportioned and charged to it in the budget. [1949 c 56 § 15; Rem. Supp. 1949 § 7505-34.]

87.80.170 Levy by board if district fails to levy. The board of joint control shall have authority to make and equalize a levy of such charge and apportionment in the same manner and with the same legal effect as the board of directors might do, for any irrigation district failing to include the amount of such charge in its levy on or before January first following the adoption of the budget of the board of joint control. [1949 c 56 § 16; Rem. Supp. 1949 § 7505-35.]

87.80.180 Budget apportionment is special assessment and lien on nondistrict lands. When said budget has been finally adopted, the secretary of the board shall forthwith mail or deliver a copy of the budget showing the apportionment and charge to the representative on the board of joint control of each tract of land under the jurisdiction of the board, but not in an irrigation district, and such charge shall be in the nature of a special assessment against said land and a lien against the same, from and after January first following, superior to any other lien except that for general taxes, and said special assessment shall be payable to the county treasurer at the same time and shall be collected and enforced by the county treasurer in the same manner as general taxes. Collections of said special assessments shall be placed by the county treasurer in the control fund of the board of joint control hereinafter provided for. [1949 c 56 § 17; Rem. Supp. 1949 § 7505-36.]

87.80.190 Control fund created—Deposits and remittances. There is hereby created in the county treasurer's office of the county in which the board of joint control was created, a special fund to be designated Control Fund of the (naming the county) County Joint Control Board No. (specifying the number). The county treasurer shall distribute all collections for this fund to said control fund. The treasurer of any other county collecting assessments for this fund shall remit the same monthly to the county treasurer of the county in which the board of joint control was created. [1949 c 56 § 18; Rem. Supp. 1949 § 7505-37.]

87.80.200 Payments from control fund. The board of joint control shall issue vouchers for its operations against said control fund and the county treasurer shall

pay out moneys from said fund upon warrants drawn by the county auditor of said county. [1949 c 56 § 19; Rem. Supp. 1949 § 7505-38.]

87.80.210 Chapter does not apply to certain districts without consent. This chapter shall not apply to any irrigation district under contract with any agency of the federal government for the construction or operation of its irrigation system without the express approval of the executive federal officer in control of said project. [1949 c 56 § 20; Rem. Supp. 1949 § 7505-39.]

Chapter 87.84

IRRIGATION AND REHABILITATION DISTRICTS

Sections

87.84.005	Purpose—Districts authorized.
87.84.010	Eligibility.
87.84.020	Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs.
87.84.030	Notice and hearing on petition.
87.84.040	Notice and election.
87.84.050	Purposes of organization.
87.84.060	Directors—Powers, rights and authority of directors and district.
87.84.061	Directors—Additional powers.
87.84.070	Special assessments—Notice and election—Collection.
87.84.071	Special assessments inferior to existing city or town L.I.D. assessments.
87.84.080	Rules and regulations—Authorized—Publication—Hearing.
87.84.090	Rules and regulations—Violation as misdemeanor—Jurisdiction—Penalty—Review.
87.84.100	Rules and regulations—Sheriff to enforce.
87.84.110	Corporate powers and authority.
87.84.120	City, town, county, powers not restricted—Title 79 RCW not modified.

87.84.005 Purpose—Districts authorized. The growing population of the state of Washington, coupled with increasing amounts of available leisure time have greatly expanded the need for and use of the larger lakes in the state of Washington, both by Washington state residents and guests from other states and countries. In order to make the use of such larger lakes safer, and more beneficial to all concerned, the state of Washington to further the health, safety, recreation and welfare of its citizens has authorized the conversion of certain irrigation districts to irrigation and rehabilitation districts. [1963 c 221 § 1.]

Severability—1963 c 221: "If any section, sentence, clause, or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional." [1963 c 221 § 11.]

87.84.010 Eligibility. Any irrigation district having the major portion of an inland navigable body of water within its exterior boundaries and which has filed with the supervisor of water resources and been granted a water right certificate for fifty thousand acre feet of water or more shall be eligible to become an irrigation

and rehabilitation district as provided in this chapter. [1963 c 221 § 2; 1961 c 226 § 2.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.020 Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs. A petition to convert an existing irrigation district to an irrigation and rehabilitation district shall be signed by at least fifty holders of title or evidence of title to land within the district. The petition shall contain the following:

- (1) The legal description of the property to be served.
- (2) The signature and address of each petitioner, together with the legal description of the lands within the district owned by each.
- (3) Any other matter deemed material.

The petition shall be accompanied by a bond, to be approved by the board, in double the amount of the probable cost of organizing the district, and conditioned that the bondsman will pay all the costs if the organization is not effected. [1961 c 226 § 3.]

87.84.030 Notice and hearing on petition. A notice of hearing and a hearing on the petition shall be held as provided by RCW 87.03.020. [1961 c 226 § 4.]

87.84.040 Notice and election. A notice of election and election shall be held to determine whether the electors desire to convert the existing irrigation district to an irrigation and rehabilitation district.

The notice of election and election shall be governed by the applicable provisions of chapter 87.03 RCW relating to the original formation of districts. [1961 c 226 § 5.]

87.84.050 Purposes of organization. In addition to the purposes for which irrigation districts may be organized under RCW 87.03.010, an irrigation and rehabilitation district may also be organized or maintained to further the recreational potential of the area and to further the rehabilitation or improvement of inland lakes and shore lines and the modification or improvement of existing or planned control structures located in the district in order to further the health, recreation, and welfare of the residents in the area. [1963 c 221 § 3; 1961 c 226 § 6.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.060 Directors—Powers, rights and authority of directors and district. The directors of the irrigation and rehabilitation district shall be the same as of the irrigation district and the directors shall retain all power, rights and authority heretofore granted to them or hereafter granted to them as directors of an irrigation district under any provision of Title 87 RCW or any amendments thereto or any authority granted to directors of irrigation districts under any other law of the state of Washington. The irrigation and rehabilitation district shall also retain all power, rights and authority heretofore or hereafter granted to irrigation districts under Title 87 RCW or any other law or laws of the state

of Washington, and use said power and authority including local improvement district provisions to further irrigation and rehabilitation district purposes and in addition shall have authority to rehabilitate or improve all or a portion of any inland body of water including adjacent shore lines located in the district and shall have the further power of modifying or improving any existing or planned water control structure located in the district in order to further the health, recreation, and welfare of the residents in the district.

All rights held by the irrigation district to water located wholly or partially in the district including but not limited to rights granted by the Washington state supervisor of water resources shall upon formation of the irrigation and rehabilitation district immediately vest in the irrigation and rehabilitation district and in addition all water in the newly formed district as to which the prior district had any rights shall be held by the new district for all the beneficial uses and purposes for which the irrigation and rehabilitation district is formed. [1963 c 221 § 4; 1961 c 226 § 7.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.061 Directors—Additional powers. The water in any natural or impounded lake, wholly or partially within the boundaries of an irrigation and rehabilitation district, together with all use of said water and the bottom and shore lines to the line established by the highest level where water has been or shall be stored in said lake, shall be regulated, controlled and used by the irrigation and rehabilitation district in order to further the health, safety, recreation and welfare of the residents in the district and the citizens and guests of the state of Washington, subject to rights of the United States bureau of reclamation and any irrigation districts organized under the laws of the state of Washington.

In addition to the powers expressly or impliedly enumerated above, the directors of an irrigation and rehabilitation district shall have the power and authority to:

(1) Control and regulate the use of boats, skiers, skin divers, aircraft, ice skating, ice boats, swimmers or any other use of said lake, by means of appropriate rules and regulations not inconsistent with state fish, game or aeronautics laws.

(2) Expend district funds for the control of mosquitoes or other harmful insects which may affect the use of any lake located in the district: *Provided*, That the state department of social and health services gives its approval in writing to any district program instituted under the authority of this item. District funds may be expended for mosquito and insect control or other district projects or activities even though it may be necessary to place chemicals or carry on activities on areas located outside of an irrigation and rehabilitation district's boundaries. These funds may be transferred to the jurisdictional health department for the purpose of carrying out the provisions of this item.

(3) Except for state highways, control, regulate or prohibit by means of rules and regulations, the building, construction, placing or allowing to be placed from adjoining land, sand, gravel, dirt, rock, tires, lumber, logs,

bottles, cans, garbage and trash, or any loathsome, noxious substances or materials of any kind, and any piling, causeways, fill, roads, culverts, wharfs, bulkheads, buildings, structures, floats, or markers, in, on or above the line established by the highest level where water has been or shall be stored in said lake, located in the district, in order to further the interests of the citizens of the state of Washington, and residents of the district.

(4) Except for state highways, control, regulate and require the placing, maintenance and use of culverts and boat accesses under and through existing fills constructed over and/or across any lake located within the district to facilitate water circulation, navigation and the reduction of flood danger.

(5) Control the taking of carp or other rough fish located in the district and including the right to grant or sell an exclusive or concurrent franchise for the taking of carp or other rough fish, providing the state fisheries department give their approval in writing to any district project regarding the capture, or sale of fish.

(6) Control and regulate by means of rules and regulations the direct or indirect introduction into any lake within the district of any human, animal or industrial waste products, sewage, effluent or byproducts, treated or untreated: *Provided*, That the state department of ecology gives its approval in writing to any district program instituted under this section, and nothing herein shall be deemed to amend, repeal, supersede, or otherwise modify any laws or regulations relating to public health or to the pollution control commission.

(7) Except for state highways, construct, maintain, place, and/or restore roads, buildings, docks, dams, canals, locks, mechanical lifts or any other type of transportation facility; dredge, purchase land, or lease land, or enter into agreements with other agencies or conduct any other activity within or without the district boundaries in order to carry out district projects or activities to further the recreational potential of the area. [1979 c 141 § 383; 1963 c 221 § 5.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.070 Special assessments—Notice and election—Collection. The directors shall be empowered to specially assess land located in the district for benefits thereto taking as a basis the last equalized assessment for county purposes: *Provided*, That such assessment shall not exceed twenty-five cents per thousand dollars of assessed value upon such assessed valuation without securing authorization by vote of the electors of the district at an election called for that purpose.

The board shall give notice of such an election, for the time and in the manner and form provided for irrigation district elections. The manner of conducting and voting at such an election, opening and closing polls, canvassing the votes, certifying the returns, and declaring the result shall be nearly as practicable the same as in irrigation district elections.

The special assessment provided for herein shall be due and payable at such times and in such amounts as designated by the district directors, which designation shall be made to the county auditor in writing, and the

amount so designated shall be added to the general taxes, and entered upon the assessment rolls in his office, and collected therewith. [1973 1st ex.s. c 195 § 132; 1961 c 226 § 8.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

87.84.071 Special assessments inferior to existing city or town L.I.D. assessments. The special assessments provided for in RCW 87.84.070 shall be subject to and inferior to existing local improvement district assessments of any city or town which is included within the boundaries of an irrigation and rehabilitation district. The collection of local improvement district assessments of a city or town, and the right to foreclose the same when delinquent, shall not be impaired in any manner whatsoever by subsequent special assessments of an irrigation and rehabilitation district. In the event that the county treasurer forecloses on land located within the corporate limits of a city or town for nonpayment of irrigation and rehabilitation district assessments, the certificates of sale and the deeds issued pursuant to the foreclosure proceedings shall contain a recital that the certificate of sale and/or deed is subject to outstanding local improvement district assessments of the city or town. [1965 ex.s. c 6 § 5.]

Severability—1965 ex.s. c 6: See RCW 35.47.900.

87.84.080 Rules and regulations—Authorized—Publication—Hearing. The directors of an irrigation and rehabilitation district shall have the authority to pass rules and regulations to accomplish district purposes. The rules and regulations shall (except in case of emergency) be published at least once in a newspaper of general circulation in the district and a public hearing shall be held prior to adoption by the directors, at a regular public meeting. [1963 c 221 § 6.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.090 Rules and regulations—Violation as misdemeanor—Jurisdiction—Penalty—Review. The directors may enact rules and regulations, the violation of which shall be punishable as a misdemeanor, and the district judges in said district shall have exclusive jurisdiction over such offenses. Penalty for violation shall not exceed a five hundred dollar fine or six months in jail: *Provided*, That where a violation is designated a misdemeanor, the directors shall submit such rules and regulations to the county commissioners of the county or counties in which the district is located who shall review same and approve or disapprove thereof. Rules or regulations disapproved by county commissioners within thirty days of submission shall be of no force or effect. [1987 c 202 § 246; 1963 c 221 § 7.]

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

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.100 Rules and regulations—Sheriff to enforce. The sheriff's department of any county in which an irrigation and rehabilitation district is located shall

enforce the rules and regulations of the district. [1963 c 221 § 8.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.110 Corporate powers and authority. An irrigation and rehabilitation district shall possess all the usual powers of a municipal corporation and shall have the authority to sue and enforce its rules and regulations. [1963 c 221 § 9.]

Severability—1963 c 221: See note following RCW 87.84.005.

87.84.120 City, town, county, powers not restricted—Title 79 RCW not modified. The provisions of this chapter shall not be construed so as to restrict the governing body of any city, town or county located on or adjacent to an inland body of water controlled by an irrigation and rehabilitation district from conducting or carrying out governmental or proprietary functions of said city, town or county: *Provided*, That nothing herein shall be deemed to amend, repeal, supersede or otherwise modify any provisions of Title 79 RCW. [1963 c 221 § 10.]

Severability—1963 c 221: See note following RCW 87.84.005.

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.02 Watercraft registration.**
- 88.04 Passenger watercraft for hire—Regulation.**
- 88.08 Specific acts prohibited.**
- 88.12 Regulation of motor boats.**
- 88.16 Pilotage act.**
- 88.20 Water craft adrift.**
- 88.24 Wharves and landings.**
- 88.28 Obstructions in navigable waters.**
- 88.32 River and harbor improvements.**

Reviser's note: Throughout Title 88 RCW references are made to certain officers and agencies the powers and duties of which have devolved upon other officers or agencies through a chain of statutes as follows:

Commissioner of labor: 1897 p 34 et seq. (commissioner & bureau of labor); 1901 p 132 et seq. (commissioner & bureau of labor); 1921 c 7 §§ 74, 76, 80, and 135 (department and director of labor and industries, division and supervisor of safety); 1973 1st ex.s. c 52 § 2 (department and director of labor and industries, division and supervisor of industrial safety and health); codified as RCW 43.22.010.

Board of state land commissioners: 1890 p 251 et seq. (state land commission); 1895 p 527 et seq. (board of state land commissioners); 1895 p 452 et seq. (commissioner of arid lands); 1897 p 229 et seq. (board of state land commissioners); 1921 c 7 § 119 (board of state land commissioners); 1927 c 255 §§ 10–13 et seq. (board of state land commissioners); 1957 c 38 §§ 1, 7, 15 (department of natural resources, supervisor, board); see also chapter 43.30 RCW.

Commissioner of public lands: State Constitution Art. 3 §§ 1, 3, 23–25; 1921 c 7 § 119 (state land commissioner); 1927 c 255 §§ 10–16 (commissioner of public lands, land commission); 1957 c 38 §§ 1, 2, 4, 5, 6, 9, 13, 15, 16 (department of natural resources); see also chapters 43.30 and 79.01 RCW; see also board of state land commissioners, supra.

Department of conservation and development: Name changed to the department of conservation, see 1957 c 215 § 19; department of conservation abolished by 1967 c 242 § 20 [RCW 43.27A.180]; residual powers and duties transferred to department of water resources by 1967 c 242 § 8 [RCW 43.27A.080]; department of water resources abolished by 1970 ex.s. c 62 § 26 [formerly RCW 43.21A.300, presently decodified]; powers and duties transferred to department of ecology by 1970 ex.s. c 62 § 6 [RCW 43.21A.060]; except as provided by 1970 ex.s. c 19 [RCW 43.21A.190].

Canal commission: Chapter 47.72 RCW.

Construction projects in state waters: Chapter 75.20 RCW.

Harbor improvements in port districts: Chapter 53.20 RCW.

Harbor line commission: RCW 79.90.070, 79.92.010.

Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15).

Harbors and tide waters: State Constitution Art. 15 § 1 (Amendment 15).

Interference with navigable body, a nuisance: RCW 9.66.010.

Jurisdiction of cities and towns over adjacent waters: RCW 35.21.160.

Lien for transportation, storage, advancements, etc.: Chapter 60.60 RCW.

Lien on vessels and equipment for labor, material, damages, and handling cargo: Chapter 60.36 RCW.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Marine recreation land act: Chapter 43.99 RCW.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Port districts: Title 53 RCW.

Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.24.290, 35.23.440 and 35A.11.020.

Steamboat companies: Chapter 81.84 RCW.

Tidelands, ownership by state: State Constitution Art. 17.

Waterways: Title 91 RCW.

Wood debris—Removal from navigable waters: Chapter 76.42 RCW.

Chapter 88.02

WATERCRAFT REGISTRATION

Sections

- 88.02.010 Definitions.
- 88.02.020 Registration and display of registration number and decal prerequisite to ownership or operation of vessel—Exceptions.
- 88.02.023 Vessel dealer display decals—Use.
- 88.02.025 Registration of vessels numbered under the federal boat safety act.
- 88.02.028 Registration of rented vessels—Dealer's vessels—Dealer registration numbers not transferable.
- 88.02.030 Exceptions from vessel registration.
- 88.02.040 Issuance of registrations—Agents—Deposit of fees in general fund.
- 88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Transfer of registrations.
- 88.02.060 Registration of dealers—Surety bond—Fees.
- 88.02.070 Certificates of title.
- 88.02.075 Duplicate certificates—Replacement decals—Surrender of original certificate or decal.
- 88.02.078 Vessel dealer business address—Office—Identification of business.
- 88.02.080 Duty of operator involved in collision, accident, or other casualty—Immunity from liability of persons rendering assistance.
- 88.02.090 Inspection of registration—Violation of chapter.
- 88.02.095 Use of vessel in negligent manner or while under the influence of alcohol or drugs prohibited—Penalty.
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88.02.184	Issuance of temporary permits by registered vessel dealers—Fee.
88.02.188	Denial, suspension, or revocation of vessel dealer registration—Penalties.
88.02.190	Inspection of vessels.
88.02.200	Department and state immune from suit for administration of chapter.
88.02.210	Records of the purchase and sale of vessels.
88.02.220	Receipt of cash or negotiable instrument before delivery of vessel—Trust account.

88.02.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(2) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state.

(4) "Department" means the department of licensing. [1983 c 7 § 14.]

88.02.020 Registration and display of registration number and decal prerequisite to ownership or operation of vessel—Exceptions. Except as provided in this chapter, no person may own or operate any vessel on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter, except that a vessel which has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal. [1985 c 267 § 1; 1983 2nd ex.s. c 3 § 47; 1983 c 7 § 15.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.023 Vessel dealer display decals—Use. Vessel dealer display decals shall only be used:

(1) To demonstrate vessels held for sale when operated by a prospective customer holding a dated demonstration permit, and shall be carried in the vessel at all times it is being operated by such individual;

(2) On vessels owned or consigned for sale that are in fact available for sale and being used only for vessel dealer business purposes by an officer of the corporation, a partner, a proprietor, or by a bona fide employee of the firm if a card so identifying any such individual is carried in the vessel at all times it is so operated. [1987 c 149 § 4.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.025 Registration of vessels numbered under the federal boat safety act. (1) A vessel numbered in this state under the federal boat safety act need not register under chapter 88.02 RCW until the earlier of: (a) One year from the date this state's vessel numbering system is approved under the federal boat safety act; or (b) the expiration date of the certificate of number issued for

the vessel under the federal boat safety act. At the time of registration under chapter 88.02 RCW, the amount of excise tax due under chapter 82.49 RCW shall include amounts which would have been due under that chapter if the vessel had been registered at the time otherwise required under chapter 88.02 RCW.

(2) As used in this section, "federal boat safety act" means the federal boat safety act of 1971 (85 Stat. 213; 46 U.S.C. 1451 et seq.). [1984 c 250 § 3.]

88.02.028 Registration of rented vessels—Dealer's vessels—Dealer registration numbers not transferable.

(1) Rented vessels shall be registered separately under RCW 88.02.020 through 88.02.050.

(2) RCW 88.02.020 does not apply to any registered dealer's vessels held for sale.

(3) Dealer registration numbers are not transferable. [1987 c 149 § 5.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.030 Exceptions from vessel registration. Vessel registration is required under this chapter except for the following:

(1) Military or public vessels of the United States, except recreational-type public vessels;

(2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;

(3) Vessels owned by a resident of a country other than the United States if the vessel is not physically located upon the waters of this state for a period of more than sixty days;

(4) Vessels owned by a resident of another state if the vessel is registered in accordance with the laws of the state in which the owner resides, but only to the extent that a similar exemption or privilege is granted under the laws of that state for vessels registered in this state: *Provided*, That any vessel which is validly registered in another state and which is physically located in this state for a period of more than sixty days is subject to registration under this chapter;

(5) Vessels used as a ship's lifeboat;

(6) Vessels equipped with propulsion machinery of less than ten horse power that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels which are temporarily in this state undergoing repair or alteration;

(10) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States; and

(11) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States. [1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16.]

Effective date—1985 c 452: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 452 § 2.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.030(10): RCW 84.36.080.

88.02.040 Issuance of registrations—Agents—Deposit of fees in general fund. The department shall provide for the issuance of vessel registrations and may appoint agents for collecting fees and issuing registration numbers and decals. Fees for vessel registrations collected by the director shall be deposited in the general fund. [1983 c 7 § 17.]

88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Transfer of registrations. Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of six dollars per year and the excise tax imposed under chapter 82.49 RCW. Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the six-dollar annual registration fee.

Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee and excise tax. Upon renewing a vessel registration, the

department shall issue a new decal to be affixed as prescribed by the department.

A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.060 Registration of dealers—Surety bond—Fees. (1) Each vessel dealer in this state shall register with the department in the manner and upon forms prescribed by the department, in accordance with rules adopted under chapter 34.04 RCW. After the completed vessel dealer application has been satisfactorily filed and the applicant is eligible as determined by the department's rules, the department shall, if no denial proceeding is in effect, issue the vessel dealer's registration on the basis of staggered annual expiration dates.

(2) Before issuing a vessel dealer's registration, the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars, running to the state of Washington, and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter. Any vessel consignor or purchaser who has suffered any loss or damage by reason of any act or omission by a dealer that constitutes a violation of this chapter may institute an action for recovery against the dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. Upon exhaustion of the penalty of the bond or cancellation of the bond by the surety, the vessel dealer registration shall automatically be deemed canceled.

(3) Vessel dealers selling fifteen vessels or fewer per year having a retail value of no more than two thousand dollars each shall not be subject to the provisions of subsection (2).

(4) For the fiscal biennium from July 1, 1987, through June 30, 1989, the registration fee for dealers shall be fifty dollars per year for an original registration, and twenty-five dollars for any subsequent renewal. In addition, a fee of twenty-five dollars shall be collected for the first decal, fifteen dollars for each additional decal, and fifteen dollars for each vessel dealer display decal replacement. In ensuing biennia, the director shall establish the amount of such fees at a sufficient level to defray the costs of administering the vessel dealer registration program. All such fees shall be fixed by rule adopted by the director in accordance with the Administrative Procedure Act, chapter 34.04 RCW. All fees collected under this section shall be deposited with the state treasurer and credited to the general fund. [1987 c 149 § 1; 1983 c 7 § 19.]

Effective date—1987 c 149: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 149 § 15.]

88.02.070 Certificates of title. (1) The department shall provide for the issuance of vessel certificates of title. Applications for certificates may be made through the agents appointed under RCW 88.02.040. The fee for a vessel certificate of title is five dollars. Fees for vessel certificates of title shall be deposited in the general fund. Security interests in vessels subject to the requirements of this chapter and attaching after July 1, 1983, shall be perfected only by indication upon the vessel's title certificate. The provisions of chapters 46.12 and 46.16 RCW relating to motor vehicle certificates of registration, titles, certificate issuance, ownership transfer, and perfection of security interests, and other provisions which may be applied to vessels subject to this chapter, may be so applied by rule of the department if they are not inconsistent with this chapter.

(2) Whenever a vessel is to be registered for the first time as required by this chapter, except for a vessel having a valid marine document as a vessel of the United States, application shall be made at the same time for a certificate of title. Any person who purchases or otherwise obtains majority ownership of any vessel subject to the provisions of this chapter, except for a vessel having a valid marine document as a vessel of the United States, shall within fifteen days thereof apply for a new certificate of title which shows the vessel's change of ownership.

(3) Security interests may be released or acted upon as provided by the law under which they arose or were perfected. No new security interest or renewal or extension of an existing security interest is affected except as provided under the terms of this chapter and RCW 46.12.095.

(4) Notice shall be given to the issuing authority by the owner indicated on the certificate of registration within fifteen days of the occurrence of any of the following: Transfer of any part or all of the ownership of a vessel registered under this chapter; any change of address of owner; destruction, loss, abandonment, theft, or recovery of the vessel; or loss or destruction of a valid certificate of registration on the vessel. [1985 c 258 § 4; 1983 2nd ex.s. c 3 § 46.]

Effective date—1985 c 258: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 258 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.075 Duplicate certificates—Replacement decals—Surrender of original certificate or decal. (1) If a certificate of title, a certificate of registration, or a pair of decals is lost, stolen, mutilated, or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly apply for and may obtain a

duplicate certificate or replacement decals upon payment of one dollar and furnishing information satisfactory to the department.

(a) An application for a duplicate certificate of title shall be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the first secured party or, if none, the owner or legal representative of the owner.

(b) An application for a duplicate certificate of registration or replacement decals shall be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the registered owner or legal representative of the owner.

(2) The duplicate certificate of title or registration shall contain the legend, "This is a duplicate certificate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.

(3) A person recovering an original certificate of title, certificate of registration, or decal for which a duplicate or replacement has been issued shall promptly surrender the original to the department. [1986 c 71 § 1.]

88.02.078 Vessel dealer business address—Office—Identification of business. (1) A vessel dealer shall have and maintain an office in which to conduct business at the business address of the dealer.

(2) The vessel dealer's place of business shall be identified by an exterior sign with the business name. In the absence of other identifiers that the business conducted is marine business, the sign must identify the nature of the business, such as marine sales, service, repair, or manufacturing. [1987 c 149 § 2.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.080 Duty of operator involved in collision, accident, or other casualty—Immunity from liability of persons rendering assistance. (1) The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident, or casualty. The operator shall also give his or her name, address, and the identification of the operator's vessel to the state parks and recreation commission and any person injured and to the owner of any property damaged: *Provided*, That this requirement shall not apply to operators of vessels when they are participating in an organized competitive event covered by a permit issued by the United States coast guard. These duties are in addition to any duties otherwise imposed by law.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or

omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same or similar circumstances. [1984 c 183 § 1; 1983 2nd ex.s. c 3 § 48.]

Boating accident reports by local government agencies: RCW 43.51.403.

Casualty and accident reports—Confidentiality—Use as evidence: RCW 43.51.402.

88.02.090 Inspection of registration—Violation of chapter. Any person charged with the enforcement of this chapter may request for inspection the certificate of registration from any vessel owner or operator to ascertain the legal and registered ownership of such vessel. Failure to provide such certificate for inspection upon the request of any person charged with enforcement of this chapter constitutes a violation of this chapter and subjects the person requested to produce such document to the penalties provided by RCW 88.02.110. [1983 c 7 § 21.]

88.02.095 Use of vessel in negligent manner or while under the influence of alcohol or drugs prohibited—

Penalty. (1) It shall be unlawful for any person to operate a vessel in a negligent manner, except a commercial vessel which has or is required to have a valid marine document as a vessel of the United States and is operating in the navigable waters of the United States. For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of a vessel in such manner as to endanger or be likely to endanger any persons or property.

(2) A person is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel within this state while:

(a) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(4) For the purpose of this section, "vessel operator" means a person who is in actual physical control of a vessel.

(5) A violation of this section is a misdemeanor, punishable by up to ninety days in jail and by a fine of not more than one thousand dollars. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense. [1987 c 373 § 6; 1986 c 153 § 6; 1985 c 267 § 2.]

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

88.02.100 Rule-making authority. The department may adopt rules under chapter 34.04 RCW to implement this chapter. [1983 c 7 § 20.]

88.02.110 Penalties—Disposition of moneys collected—Enforcement authority. (1) Except as otherwise provided in this chapter, a violation of this chapter, RCW 43.51.400, and the rules adopted by the department and the state parks and recreation commission pursuant to these statutes is a misdemeanor punishable only by a fine not to exceed one hundred dollars per vessel for the first violation. Subsequent violations in the same year are subject to the following fines:

(a) For the second violation, a fine of two hundred dollars per vessel;

(b) For the third and successive violations, a fine of four hundred dollars per vessel.

(2) After subtraction of court costs and administrative collection fees, moneys collected under this section shall be credited to the current expense fund of the arresting jurisdiction.

(3) All law enforcement officers shall have the authority to enforce this chapter, RCW 43.51.400, and the rules adopted by the department and the state parks and recreation commission pursuant to these statutes within their respective jurisdictions: *Provided*, That a city, town, or county may contract with a fire protection district for such enforcement and fire protection districts are authorized to engage in such activities. [1987 c 149 § 13; 1984 c 183 § 2; 1983 2nd ex.s. c 3 § 50; 1983 c 7 § 22.]

Effective date—1987 c 149: See note following RCW 88.02.060.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.112 Registration certificate required—Penalty. Any person engaging in vessel dealer activities without first obtaining a registration certificate is guilty of a gross misdemeanor. [1987 c 149 § 3.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.115 Additional penalties for unauthorized or personal use of dealer display decals. In addition to other penalties imposed by this chapter for unauthorized or personal use of vessel dealer display decals, the director may confiscate all display decals for such period as the director deems appropriate, and in addition, or in lieu of other sanctions, the director may impose a monetary penalty not exceeding twice the amount of excise tax that should have been paid to register each vessel properly. A monetary penalty assessment is in addition to any fees owing to register each vessel properly. Any

monetary penalty imposed or vessel display decals confiscated shall be done in accordance with chapter 34.04 RCW. Any monetary penalty imposed by the director and the delinquent excise taxes collected shall be deposited in the general fund. [1987 c 149 § 6.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.118 Obtaining vessel dealer's registration to evade excise tax prohibited—Penalty. It is a gross misdemeanor for any person to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW. [1987 c 149 § 7.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.120 Title certificate system—Legislative intent—Authority for rules and procedures to establish system. It is the intention of the legislature to establish a system of certificates of title for vessels and watercraft similar to that in existence for motor vehicles. It is the goal of this legislation that the title certificate become prima facie evidence of ownership of the vessel it describes so that persons may rely upon that certificate; and that security interest in vessels be perfected solely by notation of a secured party upon the title certificate. However, there are title certificates issued prior to June 30, 1985, which may not indicate security interests in the certificated vessel. The establishment of a more reliable system will require implementation over several years, as the existing security interests are either satisfied or their perfection is not continued. During this interim period of five years from June 30, 1985, two different classes, class A and class B, of title certificates will be in existence and issued by the department of licensing. The establishment and operation of the system for watercraft and vessels should be patterned upon the system established and operating for motor vehicles and the department of licensing is hereby authorized and directed to adopt the regulations and procedures necessary and desirable to establish such a similar system, excepting only as the same may be inconsistent with this chapter. [1985 c 258 § 1.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.125 Vessel dealers to possess certificates of title—Sales of consigned vessels—Assignment and warranty of certificates of title. (1) Vessel dealers shall possess a certificate of title for each used vessel or a manufacturer's statement of origin, a carpenter's certificate, or a factory invoice with other evidence of ownership for each new vessel in the vessel dealer's inventory unless the vessel for sale is consigned or subject to an inventory security agreement. Each certificate of title shall be either in the name of the dealer or in the name of the dealer's immediate vendor properly assigned.

(2) A vessel dealer may display and sell consigned vessels or vessels subject to an inventory security agreement if there is a written and signed consignment agreement for each vessel or an inventory security agreement covering all inventory vessels. The consignment agreement shall include verification by the vessel dealer that a

vessel title or manufacturer's statement of origin exists and its location, the name and address of the registered owner, and the legal owner, if any. Vessels that are subject to an inventory security interest shall be supported with a certificate of title or manufacturer's statement of origin that is in the dealer's possession or the possession of the inventory security party. Upon payment of the debt secured for that vessel, the secured party shall deliver the certificate of title or the manufacturer's statement of origin, appropriately released, to the dealer. It is the vessel dealer's responsibility to ensure that title documents are available for title transfer upon the sale of the vessel.

(3) Following the retail sale of any vessel, the dealer shall promptly make application and execute the assignment and warranty of the certificate of title. Such assignment shall show any secured party holding a security interest created at the time of sale. The dealer shall deliver the certificate of title and application for registration to the department. [1987 c 149 § 8.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.130 Class A title certificates. After June 30, 1985, a class A certificate shall be issued in the following circumstances:

(1) Upon application for a certificate of title to a new vessel never before titled and sold by an in-state or out-of-state dealer or manufacturer. The application must be accompanied by a manufacturer's statement of origin or other document or documents certifying the first conveyance of said vessel after its manufacture. The manufacturer's statement of origin or other similar document or documents shall reflect the model year, make, and hull identification number of the vessel.

(2) Upon transfer of a vessel or release of a security interest in a vessel for which a class A certificate of title has previously been issued if the department receives appropriate releases of interests.

(3) Commencing five years after June 30, 1985, in all cases. [1985 c 258 § 7.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.140 Issuance of class A title certificates—Required evidence. After June 30, 1985, a class A title certificate may be issued upon application by an owner, purchaser, or secured party who presents evidence satisfactory to the department of ownership of the vessel in the registered owner's name and the absence of security interests or claims except as will be shown on the new title certificate. The absence of outstanding security interests may be evidenced by appropriate Uniform Commercial Code financing statement searches by the appropriate filing officer or officers pursuant to RCW 62A.9-407(2) and releases or disclaimers of interest by any secured parties who might have security interests perfected by filing of [a] Uniform Commercial Code financing statement. [1985 c 258 § 8.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.150 Issuance of class A title certificates—
Limitation. A class A certificate of title shall not be issued for any vessel for which a class B certificate has been issued unless the class B certificate is surrendered together with appropriate releases of interest by parties shown on such certificate. [1985 c 258 § 9.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.160 Class B title certificates. All titles issued prior to June 30, 1985, are designated class B title certificates. Class B certificates evidence ownership of vessels but the vessel is more likely to be subject to a valid and perfected security interest or other claims of interest than class A certificated vessels. [1985 c 258 § 2.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.170 Class A and class B title certificates to have apparent distinctions—Class B certificate to bear legend. Class A and class B certificates shall be readily distinguishable from each other, through different color, format, or other apparent distinctions. Each class B certificate issued after June 30, 1985, shall bear the legend: "The vessel may be subject to perfected security interests or claims not indicated on this certificate." [1985 c 258 § 5.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.180 Application for title certificate—Oath by owner. Each application for a title certificate shall require the person to be designated as the registered owner to swear under penalty of the perjury laws of this state that he is the owner or an authorized agent of the owner of the vessel, and that it is free of any claim of lien, mortgage, conditional sale, or other security interest of any person except the person or persons set forth in the application as secured parties. [1985 c 258 § 6.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.184 Issuance of temporary permits by registered vessel dealers—Fee. (1) The department may authorize vessel dealers properly registered pursuant to this chapter to issue temporary permits to operate vessels under such rules as the department adopts.

(2) The fee for each temporary permit application distributed to an authorized vessel dealer shall be five dollars, which shall be credited to the payment of registration fees at the time application for registration is made. [1987 c 149 § 9.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.188 Denial, suspension, or revocation of vessel dealer registration—Penalties. Except as otherwise provided in this chapter, the director may by order deny, suspend, or revoke the registration of any vessel dealer, or in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the applicant or registrant:

(1) Is applying for a dealer's registration or has obtained a dealer's registration for the purpose of evading excise taxes on vessels; or

(2) Has been adjudged guilty of a felony that directly relates to marine trade and the time elapsed since the adjudication is less than ten years. For purposes of this section, adjudged guilty means, in addition to a final conviction in court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended; or

(3) Has failed to comply with the trust account requirements of this chapter; or

(4) Has failed to transfer a certificate of title to a purchaser as required in this chapter; or

(5) Has misrepresented the facts at the time of application for registration or renewal; or

(6) Has failed to comply with applicable provisions of this chapter or any rules adopted under it. [1987 c 149 § 12.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.190 Inspection of vessels. The department is hereby authorized to require inspection of vessels which are brought into this state from another state and for which no title certificate has been issued and for any other vessel if the department determines that inspection of the vessel will help to verify the accuracy of the information set forth on the application. [1985 c 258 § 10.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.200 Department and state immune from suit for administration of chapter. No suit or action shall ever be commenced or prosecuted against the department of licensing or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the department under chapter 88.02 RCW. [1985 c 258 § 11.]

Effective date—1985 c 258: See note following RCW 88.02.070.

88.02.210 Records of the purchase and sale of vessels. (1) A vessel dealer shall complete and maintain for a period of at least three years a record of the purchase and sale of all vessels purchased or consigned and sold by the vessel dealer. Records shall be made available for inspection by the department during normal business hours.

(2) Before renewal of the vessel dealer registration, the department shall require, on the forms prescribed, a record of the number of vessels sold during the registration year. Vessel dealers who assert that they qualify for the exemption provided in RCW 88.02.060(3) shall also record, on forms prescribed, the highest retail value of any vessel sold in the registration year. [1987 c 149 § 10.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.220 Receipt of cash or negotiable instrument before delivery of vessel—Trust account. A vessel dealer who receives cash or a negotiable instrument from a purchaser before delivery of the vessel shall place the funds in a separate trust account.

(1) The cash or negotiable instrument must be set aside immediately upon receipt for the trust account, or endorsed to such a trust account immediately upon receipt.

(2) The cash or negotiable instrument must be deposited in the trust account by the close of banking hours on the day following the receipt.

(3) After delivery of the purchaser's vessel the vessel dealer shall remove the deposited funds from the trust account.

(4) The dealer shall not commingle the purchaser's funds with any other funds at any time.

(5) The funds shall remain in the trust account until the delivery of the purchased vessel. However, for the purpose of manufacturing a vessel that does not already exist, and upon written agreement from the purchaser, the vessel dealer may remove and release trust funds before delivery. [1987 c 149 § 11.]

Effective date—1987 c 149: See note following RCW 88.02.060.

Chapter 88.04

PASSENGER WATERCRAFT FOR HIRE

Sections

88.04.300	Definitions.
88.04.310	Inspection program—Inspection fee, scope.
88.04.320	Operating violations enumerated.
88.04.330	Departmental rules—Scope—Use of coast guard standards and practices.

Inspection and regulation, department of labor and industries: RCW 43.22.050.

Regulating sale of passenger tickets: RCW 81.56.150.

Regulation by

first class cities: RCW 35.22.280.

noncharter and charter code cities: RCW 35A.11.020.

second class cities: RCW 35.23.440.

third class cities: RCW 35.24.290.

Watercraft carrying passengers for hire, operating procedures: Chapter 91.14 RCW.

88.04.300 Definitions. As used in this chapter, the following terms have the meanings indicated:

(1) Department means the department of labor and industries;

(2) Director means the director of labor and industries; and

(3) Vessel means any watercraft capable of carrying seven or more passengers for hire which does not carry a valid and current certificate of inspection from the United States coast guard and which operates upon any state waters over which the United States coast guard does not have jurisdiction for navigational safety. [1979 c 74 § 1.]

88.04.310 Inspection program—Inspection fee, scope. All vessels shall be inspected by the department in accordance with rules adopted under RCW 88.04.330.

The owner or operator of every vessel shall pay the department a fee for each inspection as may be determined by the director under RCW 88.04.330. The fee shall cover the full cost of the inspection program including travel, per diem, and administrative and legal support costs for the program. [1979 c 74 § 2.]

88.04.320 Operating violations enumerated. (1) It is unlawful for any person to operate a vessel unless that person holds a valid license issued by the United States coast guard to operate a vessel of that class.

(2) It is unlawful for any person to operate a vessel unless the vessel is operated in compliance with the rules of the department of labor and industries and has a current certificate of inspection posted. [1979 c 74 § 3.]

88.04.330 Departmental rules—Scope—Use of coast guard standards and practices. (1) The department shall adopt by rule, under chapter 34.04 RCW:

(a) Standards and fees for the inspection of vessels;

(b) The federal laws and rules relating to navigation as they are now or hereafter amended; and

(c) Any other rules needed for the efficient administration of the purposes of this chapter.

(2) Rules adopted by the department shall use United States coast guard standards and precedents and be consistent with United States coast guard practices whenever possible. [1979 c 74 § 4.]

Chapter 88.08

SPECIFIC ACTS PROHIBITED

Sections

88.08.020	Tampering with lights or signals.
88.08.030	Bringing certain foreign convicts into state.
88.08.050	Injury to lighthouses or United States light.
88.08.060	Unlicensed pilotage.

Construction projects in state waters: Chapter 75.20 RCW.

Damage by vessel to underwater cable: RCW 80.36.070.

Excessive steam in boilers, penalty: RCW 70.54.080.

Fraudulent destruction of insured property: RCW 9.91.090.

Intoxication of steamship employees: RCW 9.91.020.

88.08.020 Tampering with lights or signals. Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train or car, shall show, mask, extinguish, alter or remove any light or signal, or exhibit any false light or signal, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 402; RRS § 2654.]

Reviser's note: Caption for 1909 c 249 § 402 reads as follows: "Sec. 402. False Signals for Vessels, etc."

88.08.030 Bringing certain foreign convicts into state. Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the

laws thereof, shall be guilty of a misdemeanor. [1909 c 249 § 435; RRS § 2687.]

Reviser's note: Caption for 1909 c 249 § 435 reads as follows: "Sec. 435. Master of Vessel Bringing Foreign Convict."

88.08.050 Injury to lighthouses or United States light. Every person who shall wilfully break, injure, deface or destroy any lighthouse station, post, platform, step, lamp or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished as follows:

(1) Whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel, by imprisonment in the state penitentiary for not more than ten years.

(2) In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 403; RRS § 2655.]

Reviser's note: Caption for 1909 c 249 § 403 reads as follows: "Sec. 403. Injury to United States Light."

88.08.060 Unlicensed pilotage. Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or Puget Sound, shall be guilty of a misdemeanor: *Provided*, That nothing herein shall prohibit a master of a vessel acting as his own pilot, nor compel a master or owner of any vessel to take out a pilot license for that purpose. [1909 c 249 § 293; RRS § 2545. Prior: 1888 p 177 § 18.]

Chapter 88.12

REGULATION OF MOTOR BOATS

Sections

- 88.12.010 Definitions.
- 88.12.020 Manner of operation.
- 88.12.030 Lights.
- 88.12.040 Mufflers.
- 88.12.050 Life preserve's or life floats.
- 88.12.060 Penalty.

88.12.010 Definitions. "Darkness" is herein defined to be that period between one-half hour after sunset and one-half hour before sunrise.

"Waters", as used herein, are defined as any lake, pond or other body of water.

"Motor driven boats and vessels" are defined herein as all boats and vessels which are self propelled. [1933 c 72 § 1; RRS § 9851-1.]

88.12.020 Manner of operation. Every person operating or driving a motor propelled boat or vessel on any waters in the state, shall drive the same in a careful and prudent manner at a rate of speed no greater than is

reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters. [1933 c 72 § 2; RRS § 9851-2.]

88.12.030 Lights. It shall be unlawful for any person to operate or drive any motor propelled boat or vessel on any such waters without a white light during the hours of darkness, distinctly visible under clear weather conditions for a distance of a least three hundred feet. [1933 c 72 § 3; RRS § 9851-3.]

88.12.040 Mufflers. All such motor driven boats or vessels shall use a muffler or other similar device to reduce the sound of exhaust. [1933 c 72 § 4; RRS § 9851-4.]

88.12.050 Life preservers or life floats. Every motor driven boat operating on any such waters and carrying passengers for hire or leased for hire, shall have a life preserver or life float for each passenger said boat or vessel has capacity to carry, placed or attached in such manner as to be convenient for use. [1933 c 72 § 5; RRS § 9851-5.]

88.12.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1933 c 72 § 6; RRS § 9851-6.]

Chapter 88.16

PILOTAGE ACT

Sections

- 88.16.005 Legislative declaration of policy and intent.
- 88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.
- 88.16.020 Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel.
- 88.16.035 Board of pilotage commissioners—Powers and duties generally.
- 88.16.040 Oaths and subpoenas—Compelling attendance of witnesses—Contempt.
- 88.16.050 Pilotage districts and waters affected.
- 88.16.061 Pilotage account.
- 88.16.070 Vessels exempted and included under chapter—Penalty.
- 88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements.
- 88.16.100 Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review.
- 88.16.102 Pilots' licenses—Mandatory termination of.
- 88.16.103 Mandatory rest periods for pilots—Rules—Pilot to refuse assignment, when, report—Penalty.
- 88.16.105 Size and type of vessels prescribed for newly licensed pilot—Rules.
- 88.16.107 Pilots may testify without sanctions for doing so.
- 88.16.110 Pilots to file quarterly report—Contents.
- 88.16.115 Limiting liability of pilots—Deemed in public interest.

- 88.16.118 Limiting liability of pilots—Liability of vessel, owner, or operator not limited.
- 88.16.120 Failure to observe pilotage rate—Penalty.
- 88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.
- 88.16.135 Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request.
- 88.16.140 Pilot's lien for compensation.
- 88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor.
- 88.16.155 Vessel master to make certification before pilotage service offered—Procedure upon refusal—Rules—Penalties—Exception.
- 88.16.160 Severability and short title.
- 88.16.170 Oil tankers—Intent and purpose.
- 88.16.180 Oil tankers—State licensed pilot required.
- 88.16.190 Oil tankers—Restricted waters—Standard safety features required—Exemptions.
- 88.16.200 Vessel designed to carry liquefied natural or propane gas shall adhere to oil tanker provisions.

Unlicensed pilotage: RCW 88.08.060.

88.16.005 Legislative declaration of policy and intent. The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment of the state of Washington through the sound application of compulsory pilotage provisions in certain of the state waters.

The legislature further finds and declares that it is a policy of the state of Washington to have pilots experienced in the handling of vessels aboard vessels in certain of the state waters with prescribed qualifications and licenses issued by the state.

It is the intent of the legislature to ensure against the loss of lives, loss or damage to property and vessels, and to protect the marine environment through the establishment of a board of pilotage commissioners representing the interests of the people of the state of Washington.

It is the further intent of the legislature not to place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce. [1977 ex.s. c 337 § 1.]

Severability—1977 ex.s. c 337: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 337 § 18.]

88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum. (1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, and six members appointed by the governor and confirmed by the senate. Each of said appointed commissioners shall be appointed for a term of four years from the date of said member's commission. No person shall be eligible for appointment to said board unless that person is at the

time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of said appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and one shall be from the Grays Harbor pilotage district. Two of said appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of said shipping commissioners shall be a representative of American and one of foreign shipping. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Four members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote. [1987 c 485 § 1; 1979 ex.s. c 207 § 1; 1977 ex.s. c 337 § 2; 1977 ex.s. c 151 § 73; 1971 ex.s. c 292 § 58; 1935 c 18 § 1; RRS § 9871-1. Prior: 1888 p 175 § 1.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

88.16.020 Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel. The department of transportation of the state of Washington shall be the office of the board, and all records shall be kept in the office of the department. Each pilotage commissioner shall be compensated in accordance with RCW 43.03-.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060, to be paid out of the pilotage account on vouchers approved by the chairperson of the board: *Provided*, That the sums received under this section shall not be considered compensation earnable as defined pursuant to RCW 41.40.010(8).

The board is authorized to employ personnel, pursuant to chapter 41.06 RCW, as necessary to conduct the business of the board. [1984 c 287 § 111; 1977 ex.s. c 337 § 3; 1977 ex.s. c 151 § 74; 1975-'76 2nd ex.s. c 34 § 178; 1967 c 15 § 1; 1941 c 184 § 1; 1935 c 18 § 2; RRS § 9871-2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Federal requirements—**Severability**—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective date—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

88.16.035 Board of pilotage commissioners—**Powers and duties generally.** The board of pilotage commissioners shall:

(1) Adopt rules, pursuant to chapter 34.04 RCW as now existing or hereafter amended, necessary for the enforcement and administration of this chapter;

(2) License pilot applicants meeting the qualifications and passing the examination as provided for in RCW 88.16.090 as now or hereafter amended and to establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(3) Maintain a register of pilots, records of pilot accidents and other history pertinent to pilotage, along with a roster of vessels, agents, owners, operators, and masters necessary for the maintenance of a roster of persons interested in and concerned with pilotage and maritime safety;

(4) Annually fix the pilotage tariffs for pilotage services performed aboard vessels as required by this chapter: *Provided*, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board;

(5) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, addresses, ages, pilot license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings of individual pilots before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, mishaps, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries

of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

(6) Publish a manual which includes the pilotage act and other statutes of Washington state and the federal government which affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters. Such manual shall be distributed without cost to all pilots and governmental agencies upon request. All other copies shall be sold for a five dollar fee with proceeds to be credited to the pilotage account;

(7) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

(8) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters covered by this chapter and facilitate the efficient administration of this chapter. [1987 c 264 § 1; 1977 ex.s. c 337 § 4.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.040 Oaths and subpoenas—**Compelling attendance of witnesses**—**Contempt.** Any member of the board shall have power to administer oaths in any matter before the board for consideration or inquiry and to issue subpoenas requiring witnesses to appear before the board. Such subpoenas shall be signed by a member of the board and issued in the name of the state of Washington and be served and returned, and mileage and witness fees shall be paid in like manner and effect as in a civil action. A witness wilfully disobeying such subpoena served upon the witness shall be proceeded against upon complaint of the board to the attorney general or the prosecuting attorney of the county where the attendance of the witness was demanded as for a contempt of the authority of the superior court of said county. [1987 c 485 § 2; 1967 c 15 § 9; 1935 c 18 § 14; RRS § 9871-14.]

88.16.050 Pilotage districts and waters affected. This chapter shall apply to the pilotage districts of this state as defined in this section.

(1) "Puget Sound pilotage district", whenever used in this chapter, shall be construed to mean and include all the waters of the state of Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia,

Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude.

(2) "Grays Harbor pilotage district" shall include all inland waters, channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor. The boundary line between Grays Harbor and Willapa Harbor and the high seas shall be defined by the board. [1987 c 485 § 3; 1979 ex.s. c 207 § 2; 1977 ex.s. c 337 § 5; 1971 ex.s. c 297 § 2; 1967 c 15 § 2; 1935 c 18 § 3; RRS § 9871-3.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.061 Pilotage account. The account in the general fund designated in RCW 43.79.330(17) as the "Puget Sound pilotage account" is hereby redesignated as the "pilotage account". [1967 c 15 § 11.]

88.16.070 Vessels exempted and included under chapter—Penalty. All vessels under enrollment and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this

chapter: *Provided*, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report. [1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

Intent—1987 c 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of other classes of vessels from the provisions of this chapter." [1987 c 194 § 1.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of freight and towing vessels not more than one thousand gross tons (inspected vessel), such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee established by the board of pilotage commissioners pursuant to chapter 34.04 RCW, but not to exceed one thousand five hundred dollars, to be placed in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall conduct the examination on a regular date, as prescribed by rule, at least once every two years.

(5) The board shall have developed five examinations and grading sheets for the Puget Sound pilotage district, and two for each other pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants on a random basis and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who wilfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter.

(7) The board shall prescribe, pursuant to chapter 34.04 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may prescribe vessel simulator training for a pilot applicant, or pilot subject to RCW 88.16.105, as it deems appropriate, taking into consideration the economic cost of such training, to enhance that person's ability to perform pilotage duties under this chapter.

(9) The board shall prescribe, pursuant to chapter 34.04 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate. [1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8. Prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.100 Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review. (1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. If the board finds that the pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or property, or violated or failed to comply with state laws or regulations intended to promote marine safety or to protect navigable waters, the board may issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the state pilot license, or any combination of the above. The board shall have the power to

require that a pilot satisfactorily complete a specific course of training or treatment.

(3) The board shall implement a system of specified disciplinary actions or corrective actions, including training or treatment, that will be taken when a state licensed pilot in a specified period of time has had multiple disciplinary actions taken against the pilot's license pursuant to subsections (1) and (2) of this section. In developing these disciplinary or corrective actions, the board shall take into account the cause of the disciplinary action and the pilot's previous record.

(4) When the board determines that reasonable cause exists to issue a reprimand, impose a fine, suspend, revoke, or withhold any pilot's license or require training or treatment under subsection (1) or (2) of this section, it shall forthwith prepare and personally serve upon such pilot a notice advising him of the board's intended action, the specific grounds therefor, and the right to request a hearing to challenge the board's action. The pilot shall have thirty days from the date on which notice is served to request a full hearing before an administrative law judge on the issue of the reprimand, fine, suspension, revocation, or withholding of his pilot's license, or requiring treatment or training. The board's proposed reprimand, fine, suspension, revocation, or withholding of a license, or requiring treatment or training shall become final upon the expiration of thirty days from the date notice is served, unless a hearing has been requested prior to that time. When a hearing is requested the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by the provisions of Title 34 RCW. All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston county or by the superior court of the county in which the pilot maintains his residence or principal place of business, to which court any case with all the papers and proceedings therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of any such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision. Any case so certified to the superior court shall be tried de novo and after certification of the record to said superior court the proceedings shall be had as in a civil action. Moneys collected from fines under this section shall be deposited in the pilotage account.

(5) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare

requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice-chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.04 RCW. [1987 c 392 § 1; 1986 c 121 § 1; 1981 c 67 § 36; 1977 ex.s. c 337 § 12; 1971 ex.s. c 297 § 4; 1935 c 18 § 13; RRS § 9871-13. Prior: 1888 p 178 § 10.]

Severability—1987 c 392: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 392 § 2.]

Severability—1986 c 121: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 121 § 2.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.102 Pilots' licenses—Mandatory termination of. The license of all pilots shall be terminated upon the pilot reaching the age of seventy: *Provided*, That all pilots licensed as of September 1, 1979 may continue piloting and hold licenses until May 1, 1982. [1979 ex.s. c 207 § 4.]

88.16.103 Mandatory rest periods for pilots—Rules—Pilot to refuse assignment, when, report—Penalty. (1) Pilots, after completion of an assignment or assignments which are seven hours or longer in duration, shall receive a mandatory rest period of seven hours.

(2) A pilot shall refuse a pilotage assignment if the pilot is physically or mentally fatigued or if the pilot has a reasonable belief that the assignment cannot be carried out in a competent and safe manner. Upon refusing an assignment as herein provided a pilot shall submit a written explanation to the board within forty-eight hours. If the board finds that the pilot's written explanation is without merit, or reasonable cause did not exist for the assignment refusal, such pilot may be subject to the provisions of RCW 88.16.100.

(3) The board shall quarterly review the dispatch records of pilot organizations or pilot's quarterly reports to ensure the provisions of this section are enforced. The board may prescribe rules for rest periods pursuant to chapter 34.04 RCW. [1986 c 122 § 2; 1977 ex.s. c 337 § 9.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.105 Size and type of vessels prescribed for newly licensed pilot—Rules. The board shall prescribe, pursuant to chapter 34.04 RCW, rules governing the size and type of vessels which a newly licensed pilot may be assigned to pilot on the waters of this state and whether the assignment involves docking or undocking a

vessel. The rules shall also prescribe required familiarization trips before a newly licensed pilot may pilot a larger or different type of vessel. Such rules shall be for the first three year period in which pilots are actually employed. [1987 c 264 § 3; 1977 ex.s. c 337 § 10.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.107 Pilots may testify without sanctions for doing so. Any pilot licensed pursuant to this chapter may appear or testify before the legislature or board of pilotage commissioners and no person shall place any sanction against said pilot for having testified or appeared. [1977 ex.s. c 337 § 15.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.110 Pilots to file quarterly report—Contents. Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or by any other person for him or on his account or for his benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight tonnage, whether it was inward or outward bound, whether the amount so received, collected or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe. [1935 c 18 § 7; RRS § 9871-7. Prior: 1888 p 178 § 22.]

88.16.115 Limiting liability of pilots—Deemed in public interest. The preservation of human life and property associated with maritime commerce on the pilotage waters of this state is declared to be in the public interest, and the limitation and regulation of the liability of pilots licensed by the state of Washington is necessary to such preservation and is deemed to be in the public interest. [1981 c 196 § 1.]

Report to legislature and governor—1981 c 196: "Prior to January 5, 1983, the board of pilotage commissioners shall forward to the legislature and governor a report concerning the implementation of sections 1 through 3 of this act." [1981 c 196 § 4.] Sections 1 through 3 of this act consist of the enactment of RCW 88.16.115, 88.16.116 and 88.16.117.

88.16.118 Limiting liability of pilots—Liability of vessel, owner, or operator not limited. A ship's pilot licensed to act as such by the state of Washington shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilotage services, except as may arise by reason of the wilful misconduct or gross negligence of the pilot.

When a pilot boards a vessel, that pilot becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (1) the ship was piloted by a Washington state licensed pilot, or

(2) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot. [1984 c 69 § 1.]

88.16.120 Failure to observe pilotage rate—Penalty. No pilot shall charge, collect or receive and no person, firm, corporation or association shall pay for pilotage or other services performed hereunder any greater, less or different amount, directly or indirectly, than the rates or charges herein established or which may be hereafter fixed by the board pursuant to this chapter. Any pilot, person, firm, corporation or association violating the provisions of this section shall be guilty of a misdemeanor and shall be punished pursuant to RCW 88.16.150 as now or hereafter amended, said prosecution to be conducted by the attorney general or the prosecuting attorney of any county wherein the offense or any part thereof was committed. [1987 c 485 § 4; 1977 ex.s. c 337 § 13; 1967 c 15 § 4; 1935 c 18 § 6; RRS § 9871-6.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot. Any person not holding a license as pilot under the provisions of this chapter who pilots any vessel subject to the provisions of this chapter on waters covered by this chapter shall pay to the board the pilotage rates payable under the provisions of this chapter. Any master or owner of a vessel required to employ a pilot licensed under the provisions of this chapter who refuses to do so when such a pilot is available shall be punished pursuant to RCW 88.16.150 as now or hereafter amended and shall be imprisoned in the county jail of the county wherein he is so convicted until said fine and the costs of his prosecution are paid. [1977 ex.s. c 337 § 14; 1967 c 15 § 8; 1935 c 18 § 11; RRS § 9871-11. Prior: 1907 c 147 § 4.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.135 Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request. Any steamship company or agent may submit a request in writing to the board that a particular pilot not be assigned to pilot that company's vessels. The request shall be based on specific safety concerns of the steamship company or agent.

The board shall notify interested persons and hold a hearing on that request, and either approve or disapprove the request. If the request is approved, the board shall notify the affected pilot and give the pilot a specific list of vessels for which that pilot shall not provide pilotage services. [1987 c 485 § 6.]

88.16.140 Pilot's lien for compensation. Each vessel, its tackle, apparel and furniture and the owner thereof shall be jointly and severally liable for the compensation of any pilot employed thereon and such pilot shall have a lien upon such vessel, her tackle, apparel and furniture

for such compensation. [1935 c 18 § 15; RRS § 9871-15. Prior: 1907 c 147 § 2; 1888 p 178 § 23.]

88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor. (1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent jurisdiction in any county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of five thousand dollars. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor. [1987 c 485 § 5; 1987 c 202 § 247; 1977 ex.s. c 337 § 8; 1969 ex.s. c 199 § 41; 1967 c 15 § 7; 1935 c 18 § 10; RRS § 9871-10. Prior: 1888 p 179 § 27.]

Reviser's note: This section was amended by 1987 c 202 § 247 and by 1987 c 485 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.155 Vessel master to make certification before pilotage service offered—Procedure upon refusal—Rules—Penalties—Exception. (1) The master of any vessel which employs a Washington licensed pilot shall certify on a form prescribed by the board of pilotage commissioners that the vessel complies with:

(a) Such provisions of the United States coast guard regulations governing the safety and navigation of vessels in United States waters, as codified in Title 33 of the code of federal regulations, as the board may prescribe; and

(b) The provisions of current international agreements governing the safety, radio equipment, and pollution of vessels and other matters as ratified by the United States Senate and prescribed by the board.

(2) The master of any vessel which employs a Washington licensed pilot shall be prepared to produce, and any Washington licensed pilot employed by a vessel shall request to see, certificates of the vessel which certify and indicate that the vessel complies with subsection (1) of this section and the rules of the board promulgated pursuant to subsection (1) of this section.

(3) If the master of a vessel which employs a Washington licensed pilot cannot certify that the vessel complies with subsection (1) of this section and the rules of the board adopted pursuant to subsection (1) of this section, the master shall certify that:

(a) The vessel will comply with subsection (1) of this section before the time the vessel is scheduled to leave the waters of Washington state; and

(b) The coast guard captain of the port was notified of the noncomplying items when they were determined; and

(c) The coast guard captain of the port has authorized the vessel to proceed under such conditions as prescribed by the coast guard pursuant to its authority under federal statutes and regulations.

(4) After the board has prescribed the form required under subsection (1) of this section, no Washington licensed pilot shall offer pilotage services to any vessel on which the master has failed to make a certification required by this section. If the master fails to make a certification the pilot shall:

(a) Disembark from the vessel as soon as practicable; and

(b) Immediately inform the port captain of the conditions and circumstances by the best possible means; and

(c) Forward a written report to the board no later than twenty-four hours after disembarking from the vessel.

(5) Any Washington licensed pilot who offers pilotage services to a vessel on which the master has failed to make a certification required by this section or the rules of the board adopted under this section shall be subject to RCW 88.16.150, as now or hereafter amended, and RCW 88.16.100, as now or hereafter amended.

(6) The board shall revise the requirements enumerated in this section as necessary to reflect changes in coast guard regulations, federal statutes, and international agreements. All actions of the board under this section shall comply with chapters 34.04 and 42.30 RCW. The board shall prescribe the time of and method for retention of forms which have been signed by the master of a vessel in accordance with the provisions of this section.

(7) This section shall not apply to the movement of dead ships. The board shall prescribe pursuant to chapter 34.04 RCW, after consultation with the coast guard and interested persons, for the movement of dead ships and the certification process thereon. [1977 ex.s. c 337 § 11.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.160 Severability and short title. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this chapter. This chapter may be cited as the "Pilotage Act." [1967 c 15 § 10; 1935 c 18 § 17; RRS § 9871-16.]

88.16.170 Oil tankers—Intent and purpose. Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

The legislature further recognizes that certain areas of Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ Washington state licensed pilots and, if lacking certain safety and maneuvering capability requirements, to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters. [1975 1st ex.s. c 125 § 1.]

Severability—1975 1st ex.s. c 125: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 125 § 6.]

Study authorized and directed: "The House and Senate Transportation and Utilities Committees are authorized and directed to study the feasibility, benefits, and disadvantages of requiring similar pilot and tug assistance for vessels carrying other potentially hazardous materials and to submit their findings and recommendations prior to the 45th session of the Washington legislature in January, 1977. Such study shall also include a report on the feasibility, benefits and disadvantages of requiring vessels under tug escort to observe a speed limit, and such study shall include a discussion of the impact of a speed limit on the maneuverability of the vessel, the effectiveness of the tug escort and other legal and technical considerations material and relevant to the required study. Such study shall also include an evaluation and recommendations as to whether there should be a transfer of all duties and responsibilities of the board of pilotage commissioners to the

Washington utilities and transportation commission or other state agency, and alternate methods for establishing fair and equitable rates for tug escort and pilot transfer." [1975 1st ex.s. c 125 § 5.]

Discharge of oil into state waters: RCW 90.48.315 through 90.48.365.

88.16.180 Oil tankers—State licensed pilot required. Notwithstanding the provisions of RCW 88.16.070, any oil tanker, whether enrolled or registered, of fifty thousand deadweight tons or greater, shall be required to take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to RCW 88.16.035. [1983 c 3 § 231; 1975 1st ex.s. c 125 § 2.]

Severability—1975 1st ex.s. c 125: See notes following RCW 88.16.170.

88.16.190 Oil tankers—Restricted waters—Standard safety features required—Exemptions. (1) Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.

(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:

(a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons; and

(b) Twin screws; and

(c) Double bottoms, underneath all oil and liquid cargo compartments; and

(d) Two radars in working order and operating, one of which must be collision avoidance radar; and

(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

Provided, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: *Provided further*, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.04 RCW: *Provided further*, That a tanker of less than forty thousand deadweight tons is not subject to the provisions of RCW 88.16.170 through 88.16.190. [1975 1st ex.s. c 125 § 3.]

Severability—1975 1st ex.s. c 125: See note following RCW 88.16.170.

88.16.200 Vessel designed to carry liquefied natural or propane gas shall adhere to oil tanker provisions. Any vessel designed for the purpose of carrying as its cargo liquefied natural or propane gas shall adhere to the provisions of RCW 88.16.190(2) as though it was an oil tanker. [1977 ex.s. c 337 § 16.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Chapter 88.20 WATER CRAFT ADRIFT

Sections

88.20.010	Crafts adrift—Owner to be notified.
88.20.020	Notice—Contents—Service.
88.20.030	Posting of notice.
88.20.040	Compensation—Liability on failure to give notice.
88.20.050	Disputed claims—Trial—Bond.
88.20.060	Liability for excessive or negligent use.
88.20.070	Unclaimed craft—Procedure.

88.20.010 Crafts adrift—Owner to be notified. Any person taking up any scow, boat, skiff, canoe, or other water craft, found adrift, and out of the custody of the owner, in any stream or body of water, within, or bordering upon this state, shall forthwith notify the owner thereof, if to him known, or if upon reasonable inquiry he can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such water craft away. [Code 1881 § 3242; 1854 p 386 § 1; RRS § 9891.]

88.20.020 Notice—Contents—Service. Such notice shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his letters. Such notice shall inform the party where the scow, boat, skiff, canoe, or other water craft was taken up, and where it may be found, and what amount the taker-up or finder demands for his charges. [Code 1881 § 3243; 1854 p 386 § 2; RRS § 9892.]

88.20.030 Posting of notice. In all cases where notice is not given personally, it shall be the duty of the taker-up to post up at the post office nearest the place where such scow, boat, skiff, canoe, or other water craft may be taken up, a written notice of the taking up of such water craft, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker-up is traveling upon such stream or body of water, such notice shall be posted up at the first post office he shall pass after the taking up; and in all cases, he shall at the time when, and place where, he posts up such notice, also mail a copy of such notice, directed to the postmaster of each post office on said stream or body of water, and within fifty miles of the place where such water craft is taken up. [Code 1881 § 3244; 1854 p 386 § 3; RRS § 9893.]

88.20.040 Compensation—Liability on failure to give notice. Every person taking up any scow, boat, skiff, canoe, or other water craft, so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his time, services, expenses, and risk in taking up said property, and take notice of the same, to

be settled by agreement between the parties. In case he has not, within ten days after the taking up, substantially complied with the provisions of this chapter in giving the notice, he shall be entitled to no compensation, but he shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of said water craft, from the time of taking it up until the same is delivered to the owner. [Code 1881 § 3245; 1854 p 386 § 4; RRS § 9894.]

88.20.050 Disputed claims—Trial—Bond. In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one hundred dollars, the owner may file a complaint, setting out the facts, and the judge, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a district judge. If the amount claimed by the taker-up is more than one hundred dollars, the owner shall file his or her complaint in the superior court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one hundred dollars, and a less amount is awarded him or her, he or she shall be liable for all the costs in the superior court; and in all cases where the taker-up shall recover a less amount than has been tendered him or her by the owner or claimant, previous to filing his or her complaint, he or she shall pay the costs before the district judge or in the superior court: *Provided*, That in all cases the owner, after filing his or her complaint before a district judge, shall be entitled to the possession of such water craft, upon giving bond, with security to the satisfaction of the judge, in double the amount claimed by the taker-up. When the complaint is filed in the superior court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker-up of such scow, boat, skiff, canoe, or other water craft. [1987 c 202 § 248; Code 1881 § 3246; 1854 p 386 § 5; RRS § 9895.]

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

88.20.060 Liability for excessive or negligent use. In case the taker-up shall use the scow, boat, skiff, canoe or other water craft, more than is necessary to put it into a place of safety, he shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his neglect to take suitable care of it, he shall be liable to the owner for all damage. [Code 1881 § 3247, part; 1854 p 387 § 6; RRS § 9896, part. FORMER PART OF SECTION: Code 1881 § 3247, part. Now codified as RCW 88.20.070.]

88.20.070 Unclaimed craft—Procedure. In case such water craft is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a district judge of the district where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence be found, shall order the scow, boat, skiff, canoe, or other water craft to be sold, and after paying the

taker—up such sum as he or she shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays. In case the scow, boat, skiff, canoe, or other water craft, exceeds one hundred dollars, and is not claimed within six months, application shall be made to the superior court of the county, and the same proceeding shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution. [1987 c 202 § 249; Code 1881 § 3247, part; 1854 p 387 § 7; RRS § 9896, part. Formerly RCW 88.20.060, part.]

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

Chapter 88.24

WHARVES AND LANDINGS

Sections

- 88.24.010 Right of riparian owner to construct—Rates.
 88.24.020 County may authorize wharves and prescribe rates.
 88.24.030 City or town may authorize wharves—Rates—
 Liability.
 88.24.040 Construction requirements of wharves—When
 deemed incomplete.
 88.24.070 County acquisition by condemnation of right-of-way.

Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.24.290, 35.23.440, and 35A.11.020.

Powers of port districts as to wharves, landings, etc.: Chapter 53.08 RCW.

88.24.010 Right of riparian owner to construct—Rates. Any person owning land adjoining any navigable waters or watercourse, within or bordering upon this state, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or watercourses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: *Provided*, That he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation. [Code 1881 § 3271; 1863 p 531 § 1; 1860 p 326 § 1; 1854 p 357 § 1; RRS § 9613.]

88.24.020 County may authorize wharves and prescribe rates. (1) Whenever any person shall be desirous of erecting any wharf at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers or their baggage. (2) No such authority shall be granted to any person other than the owner of the land where the wharf is proposed to be erected, unless such owner shall neglect to apply for such authority; and whenever application shall be made for such authority by any person other than such owner, the board of county commissioners shall not grant the same unless proof shall be made that the applicant caused notice in writing of his intention to

make such application, to be given by posting up at least three notices in public places in the neighborhood where the proposed wharf is to be erected and one notice at the county court house, twenty days prior to any regular session of the board of county commissioners at which application shall be made and by serving a copy of said notice in writing upon such owner of the land, if residing in the county, at least ten days before the session of the board of county commissioners at which the application is made. (3) When such application is heard, if the owner of such land applies for such authority and files his undertaking with one or more sureties to be approved by the county commissioners in a sum not less than one hundred dollars nor more than five hundred dollars, to be fixed by the county commissioners, conditioned that such person will erect said wharf within the time therein limited, to be fixed by the county commissioners, and maintain the same and keep said wharf according to law; and if default shall at any time be made in the condition of such undertaking damages not exceeding the penalty may be recovered by any person aggrieved before any court having competent jurisdiction, then said county commissioners shall authorize such owner of the land to erect and keep such wharf. (4) If such owner of the land does not apply as aforesaid the commissioners may authorize the same to be erected and kept by such applicant upon his entering into an undertaking as required of such owner of the land. [1893 c 49 § 1; Code 1881 § 3272; 1863 p 531 § 2; 1854 p 537 § 2; RRS § 9614.]

88.24.030 City or town may authorize wharves—Rates—Liability. Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the state, he or they may apply to the municipal authorities of such town or city who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this state, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free. [Code 1881 § 3273; 1863 p 531 § 3; RRS § 9615.]

88.24.040 Construction requirements of wharves—When deemed incomplete. All wharves now standing, or hereafter to be built, in this state, shall be deemed insufficient, incomplete and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all around said wharves within ten inches of the outer edge thereof, except at the ends. [Code 1881 § 3274; 1863 p 532 § 4; 1860 p 327 § 2; RRS § 9616.]

88.24.070 County acquisition by condemnation of right-of-way. In cases where a person or persons, firm or corporation has acquired a right, title or interest in and to the tidelands or other lands over which it is proposed to build, construct or maintain such wharf or landing, whether such interest be a title in fee simple or as lessee or under contract of purchase or otherwise, and the board of county commissioners shall be unable to agree with the person, persons, firm or corporation claiming such interest or title as to the compensation to be paid for the taking of such strip of tidelands or other lands, then and in that case such board of county commissioners may by an order direct proceedings to procure a right-of-way over said tidelands or other lands to be brought in the superior court by the prosecuting attorney in the manner provided by law, for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided by the laws of this state for the appropriation of lands and other property by counties for public use. [1903 c 20 § 3; RRS § 9619.]

Chapter 88.28

OBSTRUCTIONS IN NAVIGABLE WATERS

Sections

- 88.28.050 Obstructing navigation—Penalty.
 88.28.055 Closure of Camas Slough.
 88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty.
 88.28.070 Dams, restriction on heights on tributaries of Columbia River.

Hours of labor of operators of power equipment in waterfront operations: RCW 49.28.100.

Lease of beds of navigable waters for booming purposes: RCW 79.95-.010 through 79.95.040.

Public lands: Title 79 RCW.

Railroad bridges over navigable streams: RCW 81.36.100 and chapter 79.01 RCW.

Relocation of harbor lines: RCW 79.92.020.

88.28.050 Obstructing navigation—Penalty. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river or stream, within or bordering upon this state, navigable and generally used for the navigation of vessels, boats, or other watercrafts, or for the floating down of logs, cord wood, fencing posts or rails, shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars: *Provided*, That the placing of any mill dam or boom across a stream used for floating saw logs, cord wood, fencing posts or rails shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats, saw logs, cord wood, fencing posts or rails without unreasonable delay: *Provided further*, That the obstruction of navigable waters for the purpose of deploying equipment to contain or clean up a spill of oil or other hazardous material shall not be considered an obstruction. [1987 c 479 § 4; 1888 p 190 § 1; Code 1881 § 919; 1854 p 94 § 104; RRS § 9897.]

[Title 88 RCW—p 20]

88.28.055 Closure of Camas Slough. The department of transportation may for highway purposes close off by fill or embankment all water transportation on Camas Slough, a part of the Columbia River extending from a point of land at the confluence of the left bank of the Washougal River and the right bank of the Columbia River to the land on Lady Island with the axis or center line of the embankment being more particularly described as a line bearing south seventy-six degrees (76°), fifty-one a one-half minutes (51 1/2') west from a point; said point being located on the line between section 11 and section 14 and distant approximately 520 feet westerly from the corner common to sections 11, 12, 13 and 14, all situate in township 1 north, range 3 east, W.M. The department shall construct in the fill, at or near the channel of the slough, an opening of sufficient dimensions to allow normal flow of water during the low water period or such opening as may be required or approved by the Corps of Engineers, United States Army. [1984 c 7 § 382; 1955 c 174 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty. Every master or mate, or other officer or other person, belonging to or in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels of any of the inlets, bays, harbors or rivers within or bordering on this state, where the water is less than twenty fathoms deep, shall, on conviction thereof, be fined in any sum not less than seventy-five dollars, nor more than five hundred dollars: *Provided*, That nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any city or townsite or extension thereof: *And provided further*, That in harbors within or in front of any incorporated city, where the waters are less than twenty fathoms deep, a section of said harbor may be set aside and designated by the city council of said city as a ballast ground, where ballast may be discharged under control of a harbor master to be appointed by the council. [1897 c 18 § 1; 1891 c 69 § 30; Code 1881 § 918; 1877 p 285 § 1; 1854 p 94 § 103; RRS § 9898.]

88.28.070 Dams, restriction on heights on tributaries of Columbia River. See chapter 75.20 RCW.

Chapter 88.32

RIVER AND HARBOR IMPROVEMENTS

Sections

- 88.32.010 Districts authorized.
 88.32.020 Improvement commission—Appointment—Oath.
 88.32.030 Improvement commission—Notification of appointment—Organization.
 88.32.040 Establishment of assessment district—Assessments—State lands.

- 88.32.060 Assessment roll.
- 88.32.070 Hearing on roll—Date—Notice.
- 88.32.080 Hearing on roll—Objections—Certification for collection.
- 88.32.090 Appeal from final assessment.
- 88.32.100 Lien of assessment—Collection—Payment—Interest.
- 88.32.130 Local improvement fund—Disbursements.
- 88.32.140 Bonds—Issuance—Sale—Form.
- 88.32.160 Bonds—Execution.
- 88.32.170 Payment in full—Calls for bonds, notice—Bond owners' rights.
- 88.32.180 Improvement by counties jointly.
- 88.32.190 Improvement by counties jointly—Procedure.
- 88.32.200 Improvement by counties jointly—Joint board of equalization.
- 88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings.
- 88.32.220 Improvement by counties jointly—Expenses of joint board.
- 88.32.230 Joint aid river and harbor improvements—Bonds—Election.
- 88.32.235 Joint aid river and harbor improvements—Declared county purpose.
- 88.32.240 Joint planning for improvement of navigable river—Development of river valley.
- 88.32.250 Joint planning for improvement of navigable river—Contract—Joint board to control and direct work.
- 88.32.260 Liability of county or counties for acts relating to river improvement for navigation purposes.

Construction projects in state waters: Chapter 75.20 RCW.

Flood control: Title 86 RCW.

Harbor improvement fund abolished: RCW 43.79.330.

Harbor improvements in port districts: Chapters 53.08 and 53.20 RCW.

Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15); RCW 79.90.070 and 79.92.010.

Harbors and tide waters: State Constitution Art. 15.

Joint canal construction: RCW 36.64.060.

Port districts, powers of, as to harbor improvements: Chapters 53.08 and 53.20 RCW.

Powers of

first class cities: RCW 35.22.280.

noncharter code cities and charter code cities: RCW 35A.11.020.

second class cities: RCW 35.23.440.

third class cities: RCW 35.24.290.

River improvement by counties: Chapters 86.12 and 86.13 RCW.

88.32.010 Districts authorized. Every county in this state is hereby authorized and empowered, by and through its county commissioners, whenever the government of the United States is intending or proposing the construction or operation of any river, lake, canal or harbor improvement, partly or wholly within such county, and whenever said board of county commissioners shall adjudge, upon a petition therefor filed with it and signed by at least one hundred freeholders of said county who each own realty of the assessed valuation of not less than five thousand dollars, situated within the limits of the improvement district sought to be created, that it is for the general benefit and welfare of the people of the county, that such river, lake, canal or harbor improvement be made and completed to define and establish an assessment district within such county and to levy an assessment upon so much of the taxable real estate of such county as shall be specially benefited by such improvement as hereinafter provided, for the purpose of paying the expenses of such improvement, or so much thereof as said board of county commissioners

shall determine, not in any instance exceeding one percent of the taxable valuations of all real and personal property in the entire county as appearing on the then last assessment roll. Such improvement shall be known as river and harbor improvement. [1907 c 236 § 1; RRS § 9669. Prior: 1903 c 143 §§ 1, 2.]

Limitation of levies: RCW 84.52.050 through 84.52.056.

88.32.020 Improvement commission—Appointment—Oath. Whenever the board of county commissioners of any such county shall have adjudged as provided in RCW 88.32.010, said board shall thereupon apply to the person, who, for the time being, shall be judge of the United States district court, for the district within which the county shall be situated, to name eleven reputable citizens and freeholders of such county and file a list thereof with said board of county commissioners. The persons so named, or a majority of them, shall act as a commission, and be known as the "river and harbor improvement commission of ----- county", and shall receive no compensation, except their actual necessary expenses, including necessary clerical assistance, to be audited by the board of county commissioners; and they shall be deemed the agents of the county in the performance of the duties imposed upon them by RCW 88.32.010 through 88.32.220. Each member of such commission shall, before entering upon his duties, take and subscribe an oath, substantially as follows:

"State of Washington
 County of ----- } ss.

I, the undersigned, a member of the river and harbor improvement commission of ----- county, to define and establish the assessment district and assess the costs of the following improvement (here give the general description of the improvement), do solemnly swear (or affirm, as the case may be), that I will well and truly discharge my duties as a member of said commission." In case the person who is United States judge shall be unable or decline to act, the board of county commissioners shall name the eleven persons to act as such commission. [1907 c 236 § 2; RRS § 9670.]

88.32.030 Improvement commission—Notification of appointment—Organization. The board of county commissioners of the county, or of the oldest county in case of counties joining, shall cause the persons named for the commission to be notified of their appointment in a notice that shall name all such persons and shall designate the time and place of the first meeting of the commission. The commission, having come together pursuant to such notice, and its members having taken the oath hereinbefore prescribed, shall have full powers to organize and proceed with its business as a deliberative body. [1907 c 236 § 18; RRS § 9686.]

88.32.040 Establishment of assessment district—Assessments—State lands. It shall be the duty of such

commission to define and establish an assessment district, within such county, comprising all the taxable real property, and also (with the limitations hereinafter expressed) the state shorelands, which shall be specially benefited by said river, lake, canal or harbor improvement, and to apportion and assess the amount of separate, special and particular benefits against each lot, block, parcel or tract of land or shoreland within such district, by reason of such improvement. The commission in making the assessment shall include in the properties upon [which] the assessment is laid, all shorelands of the state, whether unsold or under contract of sale and subject to sale by it and as against all purchasers from the state or under contract to purchase such lands, the assessment shall be a charge upon such land and the purchaser's interest therein. The county auditor shall certify to the state commissioner of public lands a schedule of the state shorelands so assessed and of the assessment thereon, and the purchaser shall from time to time pay to the proper county treasurer the sums due and unpaid under such assessment, and at the time of such payment the county treasurer shall give him, in addition to a regular receipt for such payment, a certificate that such payment has been made, which certificate the purchaser shall immediately file with the commissioner of public lands, and no patent from the state nor deed shall issue to such purchaser, nor shall any assignment of his contract to purchase be approved by the commissioner of public lands until every matured installment of such assessment shall have first been fully paid and satisfied: *Provided, however,* That no such assessment shall create any charge against such shoreland or affect the title thereof as against the state, and the state shall be as free to forfeit or annul such contract and again sell such land as if the assessment had never been made, and in case of such forfeiture or annulment the state shall be free to sell again such land entirely disembarassed and unencumbered of all right and claim of such former purchaser, and such purchaser shall have no right, interest or claim upon or against such land or the state or such new purchaser or at all, but every such sum paid by such former purchaser upon such assessment shall be utterly forfeited as against him, his personal representatives and assigns, and shall inure to the benefit of such new purchaser. [1907 c 236 § 3; RRS § 9671. Formerly RCW 88.32.040 and 88.32.050.]

88.32.060 Assessment roll. Such commission shall also make, or cause to be made, an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, the description of each lot, block, parcel or tract of land within such assessment district, and the amount assessed against the same, as separate, special or particular benefits, and certify such assessment roll to the board of county commissioners, of such county, within ten weeks after their appointment, or within such further time as may be allowed by the board of county commissioners of such county. [1907 c 236 § 4; RRS § 9672. Prior: 1905 c 104 § 1; 1903 c 143 § 21.]

88.32.070 Hearing on roll—Date—Notice. After the return of the assessment roll to the county legislative authority it shall make an order setting a day for the hearing upon any objections to the assessment roll by any parties affected thereby who shall be heard by the county legislative authority as a board of equalization, which date shall be at least twenty days after the filing of such roll. It shall be the duty of the county legislative authority to give, or cause to be given, notice of such assessment, and of the day fixed for the hearing, as follows:

(1) They shall send or cause to be sent, by mail, to each owner of premises assessed, whose name and place of residence is known to them, a notice, substantially in this form, to wit:

"-----
 "Your property (here describe the property) is assessed \$----- for river and harbor improvement to be made in this county.
 "Hearing on the assessment roll will be had before the undersigned, at the office of the county commissioners, on the ----- day of ----- 19--

 "Board of county commissioners."

But failure to send, or cause to be sent, such notice, shall not be fatal to the proceedings herein prescribed.

(2) They shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places in the county, three of which shall be in the neighborhood of the proposed improvement, and by publishing the same at least once a week for two consecutive weeks in the official newspaper of the county which notice shall be signed by the county legislative authority, and shall state the day and place of the hearing of objections to the assessment roll, and the nature of the improvement, and that all interested parties will be heard as to any objections to said assessment roll. [1985 c 469 § 95; 1907 c 236 § 5; RRS § 9673.]

88.32.080 Hearing on roll—Objections—Certification for collection. Any person interested in any real estate affected by such assessment may appear and file objections to the assessment roll, and the board of county commissioners may make an order regarding the time of filing such objections, as to them seems proper. As to all parcels, lots or blocks as to which no objections are filed within the time so fixed, the assessment thereon shall be confirmed. On the hearing, each party may offer proof and the board shall then have authority to affirm, modify, change and determine the assessment in such sum as to them appears just and right. When the assessment is finally equalized and fixed by the board of county commissioners, the clerk thereof shall certify the same to the county treasurer for collection, or if appeal has been taken from any part thereof, then so much thereof, as has not been appealed from, shall be certified. [1907 c 236 § 6; RRS § 9674.]

88.32.090 Appeal from final assessment. Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him may appeal therefrom to the superior court of such county. Such appeal shall be taken within the time, and substantially in the manner prescribed by the laws of this state for appeals from justice's courts. All notices of appeal shall be filed with the board of county commissioners, and served upon the prosecuting attorney of the county. The clerk of the board of county commissioners shall at appellant's expense certify to the superior court so much of the record, as appellant may request, and the cause shall be tried in the superior court de novo.

Any person desiring to appeal from any final order or judgment, made by the superior court concerning any assessment authorized by RCW 88.32.010 through 88.32.220, may appeal therefrom to the supreme court or the court of appeals, in accordance with the laws of this state relative to such appeals, except that all such appeals shall be taken within thirty days after the entry of such judgment. [1971 c 81 § 175; 1907 c 236 § 7; RRS § 9675.]

88.32.100 Lien of assessment—Collection—Payment—Interest. The final assessment shall be a lien, paramount to all other liens, except liens for taxes and other special assessments, upon the property assessed, from the time the assessment roll shall be approved by said board of county commissioners and placed in the hands of the county treasurer, as collector. After said roll shall have been delivered to the county treasurer for collection, he shall proceed to collect the same, in the manner as other taxes are collected: *Provided*, That such treasurer shall give at least ten days' notice in the official newspaper (and shall mail a copy of such notice to the owner of the property assessed, when the post office address of such owner is known, but failure to mail such notice shall not be fatal when publication thereof is made), that such roll has been certified to him for collection, and that unless payment be made within thirty days from the date of such notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged at a rate not to exceed seven percent per annum. Said interest shall be paid semiannually, and the county treasurer shall proceed to collect the amount due each year by the publication of notice as hereinabove provided. [1907 c 236 § 8; RRS § 9676. Formerly RCW 88.32.100 and 88.32.110.]

88.32.130 Local improvement fund—Disbursements. All moneys paid or collected on account of any assessments made pursuant to RCW 88.32.010 through 88.32.220, shall be kept by the county treasurer in the county depository separate and apart from the other funds of the county, in a fund to be established by the board of county commissioners and to be known as "Local Improvement Fund, District No. _____ of _____ County"; and said money shall at all times be subject to the order of the United States government

engineer, having said river and harbor improvement in said county in charge, and the county treasurer shall pay said money out upon drafts, drawn upon said fund, for the cost of said improvement, by said United States government engineer. If such government engineer is unable or unauthorized to act in the premises, then the county treasurer shall pay out said money for the costs of said improvement, upon the order of the board of county commissioners. [1907 c 236 § 9; RRS § 9677.]

88.32.140 Bonds—Issuance—Sale—Form. (1) In all cases, the county, as the agent of the local improvement district, shall, by resolution of its county legislative authority, cause to be issued in the name of the county, the bonds for such local improvement district for the whole estimated cost of such improvement, less such amounts as shall have been paid within the thirty days provided for redemption, as hereinabove specified. Such bonds shall be called "Local Improvement Bonds, District No. _____, County of _____, State of Washington", and shall be payable not more than ten years after date, and shall be subject to annual call by the county treasurer, in such manner and amounts as he may have cash on hand to pay the same in the respective local improvement fund from which such bonds are payable, interest to be paid at the office of the county treasurer. Such bonds shall be issued and delivered to the contractor for the work from month to month in such amounts as the engineer of the government, in charge of the improvement, shall certify to be due on account of work performed, or, if said county legislative authority resolves so to do, such bonds may be offered for sale after thirty days public notice thereof given, to be delivered to the highest bidder therefor, but in no case shall such bonds be sold for less than par, the proceeds to be applied in payment for such improvement: *Provided*, That unless the contractor for the work shall agree to take such bonds in payment for his work at par, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into a fund to be called "Local Improvement Fund No. _____, County of _____", and the owner or owners of such bonds shall look only to such fund for the payment of either the principal or interest of such bonds.

Such bonds shall be issued in denominations of one hundred dollars each, and shall be substantially in the following form:

"Local Improvement Bond, District Number _____ of the County of _____, State of Washington.
No. _____ N.B. _____ \$ _____

This bond is not a general debt of the county of _____ and has not been authorized by the voters of said county as a part of its general indebtedness. It is issued in pursuance of an act of the legislature of the state of Washington, passed the _____ day of _____ A.D. 1907, and is a charge against the fund herein specified and its issuance and sale is authorized by the resolution of the county legislative authority, passed on the _____ day of _____ A.D. 1907. The county of _____, a municipal corporation of the state of Washington, hereby promises to pay to

-----, or bearer, one hundred dollars, lawful money of the United States of America, out of the fund established by resolution of the county legislative authority on the ----- day of -----, A.D. 19--., and known as local improvement fund district number ----- of ----- county, and not otherwise.

"This bond is payable ten years after date, and is subject to annual call by the county treasurer at the expiration of any year before maturity in such manner and amounts as he may have cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at the rate of ----- percent per annum, payable semiannually; both principal and interest payable at the office of the county treasurer. The county legislative authority of said county, as the agent of said local improvement district No. -----, established by resolution No. -----, has caused this bond to be issued in the name of said county, as the bond of said local improvement district, the proceeds thereof to be applied in part payment of so much of the cost of the improvement of the rivers, lakes, canals or harbors of ----- county, under resolution No. -----, as is to be borne by the owners of property in said local improvement district, and the said local improvement fund, district No. ----- of ----- county, has been established by resolution for said purpose; and the owner or owners of this bond shall look only to said fund for the payment of either the principal or interest of this bond.

"The call for the payment of this bond or any bond, issued on account of said improvement, may be made by the county treasurer by publishing the same in an official newspaper of the county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from date hereof, and if such call be made, interest on this bond shall cease at the date named in such call.

"This bond is one of a series of ----- bonds, aggregating in all the principal sum of ----- dollars, issued for said local improvement district, all of which bonds are subject to the same terms and conditions as herein expressed.

"In witness whereof the said county of ----- has caused these presents to be signed by its chairman of its county legislative authority, and countersigned by its county auditor and sealed with its corporate seal, attested by its county clerk, this ----- day of -----, in the year of our Lord one thousand nine hundred and -----

The County of -----
By -----
Chairman County Legislative Authority.

Countersigned, ----- County Auditor.
Attest, ----- Clerk."

The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 245; 1970 ex.s. c 56

§ 101; 1969 ex.s. c 232 § 60; 1907 c 236 § 10; RRS § 9678. Formerly RCW 88.32.140 and 88.32.150.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

88.32.160 Bonds—Execution. Each and every bond issued for any such improvement shall be signed by the chairman of the county legislative authority and the county auditor, sealed with the corporate seal of the county, and attested by the county clerk. The bonds issued for each local improvement district shall be in the aggregate for such an amount as authorized by the resolution of the county legislative authority with reference to such river, lake, canal or harbor improvement, and each issue of such bonds shall be numbered consecutively, beginning with number 1. [1983 c 167 § 246; 1907 c 236 § 11; RRS § 9679.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

88.32.170 Payment in full—Calls for bonds, notice—Bond owners' rights. The owner of any lot or parcel of land charged with any assessment as provided for hereinabove, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided, or may redeem the same at any time after the bonds above specified shall have been issued, by paying the full amount of all the principal and interest to the end of the interest year then expiring, or next to expire. The county treasurer shall pay the interest on the bonds authorized to be issued under RCW 88.32.010 through 88.32.220 out of the respective local improvement funds from which they are payable, and whenever there shall be sufficient money in any local improvement fund, against which bonds have been issued under the provisions of RCW 88.32.010 through 88.32.220, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the county treasurer shall call in and pay such bonds, provided that such bonds shall be called in and paid in their numerical order: *Provided, further,* That such call shall be made by publication in the county official newspaper, on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that bonds numbers ----- (giving the serial number or numbers of the bonds called), will be paid on the day the interest payment on said bonds shall become due, and interest upon such bonds shall cease upon such date. If the county shall fail, neglect or refuse to pay said bonds or promptly to collect any of said assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five percent, together with

the costs of such suit. Any number of owners of such bonds for any single improvement, may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [1983 c 167 § 247; 1907 c 236 § 12; RRS § 9680. Formerly RCW 88.32.120 and 88.32.170.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

88.32.180 Improvement by counties jointly. Two or more adjoining counties, in which are lands to be benefited by any such improvement as is hereinbefore mentioned, and as will be partly or wholly within one or more of them, may jointly take advantage of the provisions of RCW 88.32.010 through 88.32.220, and the procedure in such cases shall, as nearly as may be, conform to the procedure above prescribed, but with the modifications hereinafter expressed. [1907 c 236 § 13; RRS § 9681.]

88.32.190 Improvement by counties jointly—Procedure. In every case of such joint action, the preliminary procedure of RCW 88.32.010 having been first had in each county severally, the board of county commissioners of the several counties proposing to join shall unite in such an application as is prescribed in RCW 88.32.020, and the application shall be made to any person, who, for the time being, shall be a judge of the United States district court in any district in which such counties, or any of them, may lie, and the list mentioned in RCW 88.32.020 shall be made in as many counterparts as there are counties so joining, and one counterpart shall be filed with the board of county commissioners of each county, and if the person who is such United States judge shall decline or be unable to act, then, the board of such counties shall meet in joint session, at the county seat of such one of the counties as shall be agreed upon and shall organize as a joint board by appointing a chairman and clerk, and by resolution in which a majority of all the commissioners present, and at least one commissioner from each county, shall concur, name the eleven persons for the commission, which eleven in such case shall be citizens of the counties concerned, and as nearly as may be the same number from each county. A counterpart of such resolution shall be recorded in the minutes of the proceedings of the board of each county. The commission shall make as many assessment rolls as there are counties joining and one counterpart roll shall be certified by such chairman and clerk of the joint board, and by such clerk filed with the board of each of such counties. [1907 c 236 § 14; RRS § 9682.]

88.32.200 Improvement by counties jointly—Joint board of equalization. For purposes of a board of equalization, said boards shall from time to time meet as a joint board as aforesaid, and have a chairman and clerk as aforesaid, and for all purposes under RCW 88.32.070 and 88.32.080, in case of counties joining, the word board wherever occurring in said sections shall be interpreted to mean such joint board, and the word clerk

shall be deemed to mean the clerk of such joint board, and the posting of notices shall be in at least ten public places in each county, and the publication of the same shall be in a newspaper of each county, and the objections mentioned in RCW 88.32.080 shall be filed with the clerk of the joint board, who shall cause a copy thereof, certified by him to be filed with the clerk of the board of county commissioners of the county where the real estate of the party objecting is situated. [1907 c 236 § 15; RRS § 9683.]

88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings. The minutes of the proceedings of the joint board and the assessment roll as finally settled by such board shall be made up in as many counterparts as there are counties joining as aforesaid, and shall be signed by the chairman and clerk of said board, and one of said counterparts so signed shall be filed by said clerk with the clerk of the board of county commissioners of each of said counties, and any appeals and subsequent proceedings under RCW 88.32.090 to 88.32.170, inclusive, as far as relates to real estate in any individual county, shall be as nearly as may be the same as if the local improvement district and bond issue concerned that county only. [1907 c 236 § 16; RRS § 9684.]

88.32.220 Improvement by counties jointly—Expenses of joint board. The joint board shall keep careful account of its necessary expenses and shall apportion and charge the same to the counties joining, and certify to the board of county commissioners of each such county an itemized statement of the entire account and of the proportionate part of such expense charged to such county and the board of county commissioners of such county shall cause the same to be paid out of the general fund of the county. [1907 c 236 § 17; RRS § 9685.]

County current expense fund: RCW 36.33.010.

88.32.230 Joint aid river and harbor improvements—Bonds—Election. Whenever the board of county commissioners of any county of the first class of this state shall deem it for the interest of the county to engage in or to aid the United States of America, the state of Washington, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county commissioners, to engage in or aid in any such public work or

works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed two and one-half percent of the value of the taxable property in said county, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in *sections 1846 to 1851, inclusive, of Ballinger's Annotated Codes and Statutes of Washington, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: *Provided*, That said commissioners shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [1970 ex.s. c 42 § 37; 1911 c 3 § 1; RRS § 9666. FORMER PART OF SECTION: 1911 c 3 § 2 now codified as RCW 88.32.235.]

***Reviser's note:** "Sections 1846 to 1851" of Ballinger's referred to herein were codified in RCW 36.67.020 through 36.67.060. RCW 36.67.020 has been repealed by 1971 c 76 § 6. Compare the session law source of Ballinger sections in 1890 p 37 §§ 2-7.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Bonds, generally as to form, etc.: Chapter 39.44 RCW.

Powers of first class counties apply to Class A and AA: RCW 36.13.090.

88.32.235 Joint aid river and harbor improvements—Declared county purpose. Any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose. [1911 c 3 § 2; RRS § 9667. Formerly RCW 88.32.230, part.]

88.32.240 Joint planning for improvement of navigable river—Development of river valley. Any county together with any port district therein and first class city in such county may participate jointly in surveys, investigations and studies for determining the location, type and design, with cost estimates, of a project plan for the improvement of any section or sections, within or without the limits of such city, of any navigable river emptying into tidal waters in such city, in aid of commerce and navigation and in aid of the comprehensive land use and development of such river valley, including present and future industrial and manufacturing uses. [1951 c 33 § 1.]

88.32.250 Joint planning for improvement of navigable river—Contract—Joint board to control and direct work. The joint participation shall be under a contract in writing made in the names of the county, port district, and city, under ordinance or resolution that provides the nature and extent of the work, the extent of the participation of the parties, the division of the costs, and method of payment. The costs shall be paid from

any funds of the county, city, or port district designated in the contract.

The control and direction of the work shall be under a joint board consisting of one or more representatives of each party to the contract, as may be agreed upon by the parties. The representatives of the respective parties shall be appointed by the governing body of the respective parties. The joint board shall employ such help and services as may be required and fix the compensation to be paid for the services. The joint board shall consult with the corps of engineers, department of the army, and with the state secretary of transportation and the state director of ecology in furtherance of federal and state of Washington interests in the purposes of RCW 88.32.240 and 88.32.250. [1984 c 7 § 383; 1951 c 33 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

88.32.260 Liability of county or counties for acts relating to river improvement for navigation purposes. See RCW 86.12.037.

Title 89

RECLAMATION, SOIL CONSERVATION AND LAND SETTLEMENT

Chapters

- 89.08** Conservation districts.
- 89.12** Reclamation and irrigation districts in United States reclamation areas.
- 89.16** Reclamation by state.
- 89.30** Reclamation districts of one million acres.

Reviser's note: Throughout Title 89 RCW reference is made to certain officers and agencies the powers and duties of which have devolved upon other officers or agencies as follows:

Department of conservation and development: Name changed to the department of conservation, see 1957 c 215 § 19 (RCW 43.17.010).

The department of conservation was abolished by 1967 c 242 § 20 (RCW 43.27A.180) and the division of reclamation transferred to the department of water resources by 1967 c 242 § 8 (RCW 43.27A.080). The department of water resources powers and duties were transferred to department of ecology; see chapter 43.21A RCW.

State reclamation board: 1919 c 158 (reclamation board); 1921 c 7 §§ 64, 70, 135 (division and supervisor of reclamation in the department of conservation and development); 1957 c 215 §§ 19, 20, 21 (name changed to department of conservation); see also RCW 43.17-.010, 43.21.010, 43.21.110.

Commissioner of public lands: State Constitution, Art. 3 §§ 1, 3, 23–25 (commissioner of public lands); 1921 c 7 § 119 (state land commissioner); 1927 c 255 §§ 10–16 (commissioner of public lands); 1957 c 38 §§ 1, 2, 4, 5, 6, 9, 13, 15, 16 (department of natural resources); see chapters 43.12 and 43.30 RCW; see also 1890 p 251 et seq.; 1895 p 527 et seq.; 1895 p 452 et seq.; 1897 p 229 et seq.

State College of Washington: Name changed to Washington State University, see 1959 c 77 § 1 (RCW 28B.30.010).

Board of state land commissioners: 1890 p 251 et seq. (state land commission); 1895 p 452 et seq. (commissioner of arid lands); 1895 p 527 et seq. (board of state land commissioners); 1897 p 229 et seq. (board of state land commissioners); 1921 c 7 § 119 (state land commissioner); 1927 c 255 §§ 10–13 et seq. (board of state land commissioners); 1957 c 38 §§ 1, 7, 15 (department of natural resources); see also chapter 43.30 RCW.

State reclamation service of Washington: 1919 c 158 §§ 2, 3 (state reclamation service, state reclamation board); 1921 c 7 §§ 64, 70, 135 (division of reclamation in department of conservation and development); see also state reclamation board, *supra*. Also department of conservation and development, *supra*.

Bureau of farm development: 1913 c 18 (bureau of farm development); 1949 c 181 (counties and municipalities cooperating with Washington State University).

State equalization committee: 1891 pp 307 et seq. (state board of equalization); 1893 pp 349 et seq. (board of equalization); 1897 pp 164 et seq. (board of equalization); 1921 c 7 § 5 (state equalization committee); 1925 ex.s. c 130 § 70 (state board of equalization), see also RCW 84.48.080.

Assessments against public lands: Chapter 79.44 RCW.

Columbia basin commission: Chapter 43.49 RCW.

Construction projects in state waters: Chapter 75.20 RCW.

Conveyance of real property by public bodies—Recordings: RCW 65.08.095.

Diking and drainage: Title 85 RCW.

Disincorporation of district located in class A or AA counties and inactive for five years: Chapter 57.90 RCW.

Facilitating recovery from Mt. St. Helens eruption scope of local government action: RCW 36.01.150. scope of state agency action: RCW 43.01.210.

Fishways at dams: RCW 77.16.210.

Flood control: Title 86 RCW.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

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

Chapter 89.08

CONSERVATION DISTRICTS

Sections

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- 89.08.900 Severability—1939 c 187.
- 89.08.901 Severability—1973 1st ex.s. c 184.

State participation in soil conservation district—Limit: RCW 86.26.100.

89.08.005 Short title. This chapter shall be known and cited as the conservation districts law. [1973 1st ex.s. c 184 § 1; 1961 c 240 § 1; 1939 c 187 § 1; RRS § 10726–1.]

89.08.010 Preamble. It is hereby declared, as a matter of legislative determination:

(1) That the lands of the state of Washington are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the lands of this state by wind and water; that the breaking of natural grass, plant and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed off of lands; that there has been an accelerated washing of sloping lands; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands may cause a washing and blowing of soil from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible, and that extensive denuding of land for development creates critical erosion areas that are difficult to effectively regenerate and the resulting sediment causes extensive pollution of streams, ponds, lakes and other waters.

(2) That the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors, and loading the air with soil particles; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overflow of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(3) That to conserve soil resources and control and prevent soil erosion and prevent flood water and sediment damages, and further agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil

erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices, and works of improvement for flood prevention of agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(4) Whereas, there is a pressing need for the conservation of renewable resources in all areas of the state, whether urban, suburban, or rural, and that the benefits of resource practices, programs, and projects, as carried out by the state conservation commission and by the conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the renewable resources of this state, and for the control and prevention of soil erosion, and for the prevention of flood water and sediment damages, and for furthering agricultural and nonagricultural phases of conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. To this end all incorporated cities and towns heretofore excluded from the boundaries of a conservation district established pursuant to the provisions of the state conservation district law, as amended, may be approved by the conservation commission as being included in and deemed a part of the district upon receiving a petition for annexation signed by the governing authority of the city or town and the conservation district within the exterior boundaries of which it lies in whole or in part or to which it lies closest. [1973 1st ex.s. c 184 § 2; 1939 c 187 § 2; RRS § 10726-2.]

89.08.020 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Commission" and "state conservation commission" means the agency created hereunder. All former references to "state soil and water conservation committee", "state committee" or "committee" shall be deemed to be references to the "state conservation commission";

"District", or "conservation district" means a governmental subdivision of this state and a public body corporate and politic, organized in accordance with the

provisions of *this 1973 amendatory act, for the purposes, with the powers, and subject to the restrictions set forth in this chapter. All districts created under *this 1973 amendatory act shall be known as conservation districts and shall have all the powers and duties set out in *this 1973 amendatory act. All references in *this 1973 amendatory act to "districts", or "soil and water conservation districts" shall be deemed to be reference to "conservation districts";

"Board" and "supervisors" mean the board of supervisors of a conservation district;

"Land occupier" or "occupier of land" includes any person, firm, political subdivision, government agency, municipality, public or private corporation, copartnership, association, or any other entity whatsoever which holds title to, or is in possession of, any lands lying within a district organized under the provisions of *this 1973 amendatory act, whether as owner, lessee, renter, tenant, or otherwise;

"District elector" means a qualified county elector occupying land within the district boundary;

"Due notice" means a notice published at least twice, with at least six days between publications, in a publication of general circulation within the affected area, or if there is no such publication, by posting at a reasonable number of public places within the area, where it is customary to post notices concerning county and municipal affairs. Any hearing held pursuant to due notice may be postponed from time to time without a new notice;

"Renewable natural resources", "natural resources" or "resources" includes land, air, water, vegetation, fish, wildlife, wild rivers, wilderness, natural beauty, scenery and open space;

"Conservation" includes conservation, development, improvement, maintenance, preservation, protection and use, and alleviation of floodwater and sediment damages, and the disposal of excess surface waters.

"Farm and agricultural land" means either (a) land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses; (b) any parcel of land five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or (c) any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural

lands". [1973 1st ex.s. c 184 § 3; 1961 c 240 § 2; 1955 c 304 § 1; 1939 c 187 § 3; RRS § 10726-3.]

*Reviser's note: "This 1973 amendatory act" or "this act" apparently consists of amendments to RCW 89.08.005 through 89.08.220, 89.08.350 through 89.08.380 by 1973 1st ex.s. c 184, to the repeal of RCW 89.08.340, and to RCW 89.08.341, 89.08.391 and 89.08.901.

89.08.030 Conservation commission. There is hereby established to serve as an agency of the state and to perform the functions conferred upon it by law, the state conservation commission, which shall succeed to all powers, duties and property of the state soil and water conservation committee.

The commission shall consist of ten members, five of whom are ex officio. Two members shall be appointed by the governor, one of whom shall be a landowner or operator of a farm. At least two of the three elected members shall be landowners or operators of a farm and shall be elected as herein provided. The appointed members shall serve for a term of four years.

The three elected members shall be elected for three-year terms, one shall be elected each year by the district supervisors at their annual state-wide meeting. One of the members shall reside in eastern Washington, one in central Washington and one in western Washington, the specific boundaries to be determined by district supervisors. At the first such election, the term of the member from western Washington shall be one year, central Washington two years and eastern Washington three years, and successors shall be elected for three years.

Unexpired term vacancies in the office of appointed commission members shall be filled by appointment by the governor in the same manner as full-term appointments. Unexpired terms of elected commission members shall be filled by the regional vice president of the Washington association of conservation districts who is serving that part of the state where the vacancy occurs, such term to continue only until district supervisors can fill the unexpired term by electing the commission member.

The director of the department of ecology, the director of the department of agriculture, the commissioner of public lands, the president of the Washington association of conservation districts, and the dean of the college of agriculture at Washington State University shall be ex officio members of the commission. An ex officio member of the commission shall hold office so long as he or she retains the office by virtue of which he or she is a member of the commission. Ex officio members may delegate their authority.

The commission may invite appropriate officers of cooperating organizations, state and federal agencies to serve as advisers to the conservation commission. [1987 c 180 § 1; 1983 c 248 § 13; 1973 1st ex.s. c 184 § 4; 1967 c 217 § 1; 1961 c 240 § 3; 1955 c 304 § 3. Prior: 1951 c 216 § 3; 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

89.08.040 Members—Compensation and travel expenses—Records, rules, hearings, etc. Members shall be compensated in accordance with RCW 43.03.240 and

shall be entitled to travel expenses in accordance with RCW 43.03.050 and 43.03.060 incurred in the discharge of their duties.

The commission shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under *this 1973 amendatory act. The state department of ecology is empowered to pay the travel expenses of the elected and appointed members of the state conservation commission, and the salaries, wages and other expenses of such administrative officers or other employees as may be required under the provisions of this chapter. [1984 c 287 § 112; 1975-'76 2nd ex.s. c 34 § 179; 1973 1st ex.s. c 184 § 5; 1961 c 240 § 4; 1955 c 304 § 4. Prior: 1951 c 216 § 4; 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

*Reviser's note: "This 1973 amendatory act", see note following RCW 89.08.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

89.08.050 Employees—Delegation—Quorum.

The commission may employ an administrative officer, and such technical experts and such other agents and employees, permanent and temporary as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the attorney general for such legal services as it may require.

It shall have authority to delegate to its chairman, to one or more of its members, to one or more agents or employees such duties and powers as it deems proper. It shall be supplied with suitable office accommodations at the central office of the department of ecology, and shall be furnished the necessary supplies and equipment.

The commission shall organize annually and select a chairman from among its members, who shall serve for one year from the date of his selection. A majority of the commission shall constitute a quorum and all actions of the commission shall be by a majority vote of the members present and voting at a meeting at which a quorum is present. [1973 1st ex.s. c 184 § 6; 1961 c 240 § 5; 1955 c 304 § 5. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

89.08.060 Assistance of other state agencies and institutions. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency or state institution of learning may, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission, members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request. [1973 1st ex.s. c 184 § 7; 1955 c 304 § 6. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

89.08.070 General duties of commission. In addition to the duties and powers hereinafter conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts organized under the provisions of *this 1973 amendatory act, in the carrying out of any of their powers and programs:

(a) to assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under *this act;

(b) to review district programs;

(c) to coordinate the programs of the several districts and resolve any conflicts in such programs;

(d) to facilitate, promote, assist, harmonize, coordinate, and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties, and other public agencies.

(2) To keep the supervisors of each of the several conservation districts organized under the provisions of *this 1973 amendatory act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, interstate, or other public or private agency, organization, or individual, and advise the districts concerning such agreements or forms of agreements.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state in the work of such districts.

(5) To recommend the inclusion in annual and longer term budgets and appropriation legislation of the state of Washington of funds necessary for appropriation by the legislature to finance the activities of the commission and the conservation districts; to administer the provisions of any law hereinafter enacted by the legislature appropriating funds for expenditure in connection with the activities of conservation districts; to distribute to conservation districts funds, equipment, supplies and services received by the commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services; to issue regulations establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts and advise the districts concerning their conformance with applicable laws and regulations.

(6) To encourage the cooperation and collaboration of state, federal, regional, interstate and local public and private agencies with the conservation districts, and facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources.

(7) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable; to make available information concerning the needs and the work of the conservation district and the commission to the governor, the legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies, and the general public.

(8) Pursuant to procedures developed mutually by the commission and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, to receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions, and to avoid duplication of effort.

(9) To compile information and make studies, summaries and analysis of district programs in relation to each other and to other resource conservation programs on a state-wide basis.

(10) To assist conservation districts in obtaining legal services from state and local legal officers.

(11) To require annual reports from conservation districts, the form and content of which shall be developed by the commission.

(12) To establish by regulations, with the assistance and advice of the state auditor's office, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts. [1973 1st ex.s. c 184 § 8; 1961 c 240 § 6; 1955 c 304 § 7. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

*Reviser's note: "This act" and "this 1973 amendatory act", see note following RCW 89.08.020.

89.08.080 Petition to form district—Contents. To form a conservation district, twenty-five or more persons occupying land within the area to be affected may file a petition with the commission asking that the area be organized into a district.

The petition shall give the name of the proposed district, state that it is needed in the interest of the public health, safety, and welfare, give a general description of the area proposed to be organized and request that the commission determine that it be created, and that it define the boundaries thereof and call an election on the question of creating the district.

If more than one petition is filed covering parts of the same area, the commission may consolidate all or any of them. [1973 1st ex.s. c 184 § 9; 1961 c 240 § 7; 1961 c 17 § 1. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.090 Notice of hearing—Hearing. Within thirty days after a petition is filed, the commission shall give due notice of the time and place of a public hearing

thereon. At the hearing all interested persons shall be heard.

If it appears to the commission that additional land should be included in the district, the hearing shall be adjourned and a new notice given covering the entire area and a new date fixed for further hearing, unless waiver of notice by the owners of the additional land is filed with the commission.

No district shall include any portion of a railroad right of way, or another similar district. The lands included in a district need not be contiguous. [1973 1st ex.s. c 184 § 10; 1955 c 304 § 9. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.100 Findings—Order. After the hearing, if the commission finds that the public health, safety, and welfare warrant the creation of the district, it shall enter an order to that effect and define the boundaries thereof by metes and bounds or by legal subdivisions.

In making its findings the commission shall consider the topography of the particular area and of the state generally; the composition of the soil; the distribution of erosion; the prevailing land use practices; the effects upon and benefits to the land proposed to be included; the relation of the area to existing watersheds and agricultural regions and to other similar districts organized or proposed; and consider such other physical, geographical, and economic factors as are relevant.

If the commission finds there is no need for the district, it shall enter an order denying the petition, and no petition covering the same or substantially the same area may be filed within six months thereafter. [1973 1st ex.s. c 184 § 11; 1955 c 304 § 10. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.110 Election—How conducted. If the commission finds that the district is needed, it shall then determine whether it is practicable. To assist the commission in determining this question, it shall, within a reasonable time, submit the proposition to a vote of the land occupiers in the proposed district.

The commission shall fix the date of the election, designate the polling places, fix the hours for opening and closing the polls, and appoint the election officials. The election shall be conducted, the vote counted and returns canvassed and the results published by the commission. [1973 1st ex.s. c 184 § 12; 1955 c 304 § 11. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.120 Ballots. The commission shall provide the ballots for the election which shall contain the words

" For creation of a conservation district of the lands below described and lying in the county or counties of -----, ----- and -----," and

" Against creation of a conservation district of the lands below described and lying in the county or counties of -----, ----- and -----."

The ballot shall set forth the boundaries of the proposed district, and contain a direction to insert an X in the square of the voter's choice. [1973 1st ex.s. c 184 § 13;

1961 c 240 § 8; 1955 c 304 § 12. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.130 Notice of election. The commission shall give due notice of the election, which shall state generally the purpose of the election, the date thereof, the place and hours of voting, and set forth the boundaries of the proposed district.

Only qualified electors within the proposed district as determined by the commission may vote at the election. Each voter shall vote in the polling place nearest his residence. If he resides outside the district, he shall vote at the nearest polling place of the district. [1973 1st ex.s. c 184 § 14; 1955 c 304 § 13. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.140 Expense of hearing and election. The commission shall bear all expense of giving the notices and conducting the hearings and election, and shall issue regulations governing all hearings and elections and supervise the conduct thereof. It shall provide for registration of eligible voters or prescribe the procedure to determine the eligible voters. No informality in connection with the election shall invalidate the results, if the notice thereof was substantially given, and the election fairly conducted. [1973 1st ex.s. c 184 § 15; 1955 c 304 § 14. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.150 Procedure after canvass. If a majority of the votes cast at the election are against the creation of the district, the commission shall deny the petition. If a majority favor the district, the commission shall determine the practicability of the project.

In making such determination, the commission shall consider the attitude of the land occupiers of the district; the number of eligible voters who voted at the election; the size of the majority vote; the wealth and income of the land occupiers; the probable expense of carrying out the project; and any other economic factors relevant thereto.

If the commission finds that the project is impracticable it shall enter an order to that effect and deny the petition. When the petition has been denied, no new petition covering the same or substantially the same area may be filed within six months therefrom. [1973 1st ex.s. c 184 § 16; 1955 c 304 § 15. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.160 Appointment of supervisors—Application to secretary of state. If the commission finds the project practicable, it shall appoint two supervisors, one of whom shall be a landowner or operator of a farm, who shall be qualified by training and experience to perform the specialized skilled services required of them. They, with the three elected supervisors, two of whom shall be landowners or operators of a farm, shall constitute the governing board of the district.

The two appointed supervisors shall file with the secretary of state a sworn application, reciting that a petition was filed with the commission for the creation of

the district; that all required proceedings were had thereon; that they were appointed by the commission as such supervisors; and that the application is being filed to complete the organization of the district. It shall contain the names and residences of the applicants, a certified copy of their appointments, the name of the district, the location of the office of the supervisors and the term of office of each applicant.

The application shall be accompanied by a statement of the commission, reciting that a petition was filed, notice issued, and hearing held thereon as required; that it determined the need for the district and defined the boundaries thereof; that notice was given and an election held on the question of creating the district; that a majority vote favored the district, and that the commission had determined the district practicable; and shall set forth the boundaries of the district. [1973 1st ex.s. c 184 § 17; 1955 c 304 § 16. Prior: 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.170 Secretary of state's certificate—Change of name. If the secretary of state finds that the name of the proposed district is such as will not be confused with that of any other district, he shall enter the application and statement in his records. If he finds the name may be confusing, he shall certify that fact to the commission, which shall submit a new name free from such objections, and he shall enter the application and statement as modified, in his records. Thereupon the district shall be considered organized into a body corporate.

The secretary of state shall then issue to the supervisors a certificate of organization of the district under the seal of the state, and shall record the certificate in his office. Proof of the issuance of the certificate shall be evidence of the establishment of the district, and a certified copy of the certificate shall be admissible as evidence and shall be proof of the filing and contents thereof. The name of a conservation district may be changed upon recommendation by the supervisors of a district and approval by the state conservation commission and the secretary of state. The new name shall be recorded by the secretary of state following the same general procedure as for the previous name. [1973 1st ex.s. c 184 § 18; 1961 c 240 § 9; 1955 c 304 § 17. Prior: 1951 c 216 § 1; 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.180 Annexation of territory—Boundary change—Combining two or more districts. Territory may be added to an existing district upon filing a petition as in the case of formation with the commission by occupiers of the lands to be included. The same procedure shall be followed as for the creation of the district.

As an alternate procedure, the commission may upon the petition of a majority of the land occupiers in any one or more districts or in unorganized territory adjoining a conservation district change the boundaries of a district, or districts, if such action will promote the practical and feasible administration of such district or districts.

Upon petition of the boards of supervisors of two or more districts, the commission may approve the combining of all or parts of such districts and name the district, or districts, with the approval of the name by the secretary of state. A public hearing and/or a referendum may be held if deemed necessary or desirable by the commission in order to determine the wishes of land occupiers.

When districts are combined, the joint boards of supervisors will first select a chairman, secretary and other necessary officers and select a regular date for meetings. All elected supervisors will continue to serve as members of the board until the expiration of their current term of office, and/or until the election date nearest their expiration date. All appointed supervisors will continue to serve until the expiration of their current term of office, at which time the commission will make the necessary appointments. In the event that more than two districts are combined, a similar procedure will be set up and administered by the commission.

When districts are combined or territory is moved from one district to another, the property, records and accounts of the districts involved shall be distributed to the remaining district or districts as approved by the commission. A new certificate of organization, naming and describing the new district or districts, shall be issued by the secretary of state. [1973 1st ex.s. c 184 § 19; 1961 c 240 § 10; 1955 c 304 § 18. Prior: 1951 c 216 § 2; 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.190 Nomination and election of supervisors—Annual meeting of voters. Within thirty days after the issuance of the certificate of organization, unless the time is extended by the commission, petitions shall be filed with the commission to nominate candidates for the three elected supervisors. The petition shall be signed by not less than twenty-five district electors, and a district elector may sign petitions nominating more than one person.

In the case of a new district, the commission shall give due notice to elect the three supervisors. All provisions pertaining to elections on the creation of a district shall govern this election so far as applicable. The names of all nominees shall appear on the ballot in alphabetical order, together with instructions to vote for three. The three candidates receiving the most votes shall be declared elected supervisors, the one receiving the most being elected for a three-year term, the next for two and the last for one year. An alternate method of dividing the district into three zones may be used when requested by the board of supervisors and approved by the commission. In such case, instructions will be to vote for one in each zone. The candidate receiving the most votes in a zone shall be declared elected.

Each year after the creation of the first board of supervisors, the board shall by resolution and by giving due notice, set a date during the first quarter of each calendar year at which time it shall conduct an election. Names of candidates nominated by petition shall appear in alphabetical order on the ballots, together with an extra line wherein may be written in the name of any other

candidate. The commission shall establish procedures for elections, canvass the returns and announce the official results thereof. Election results may be announced by polling officials at the close of the election subject to official canvass of ballots by the commission. Supervisors elected shall take office at the first board meeting following the election. [1973 1st ex.s. c 184 § 20; 1967 c 217 § 2; 1961 c 240 § 11; 1955 c 304 § 19; 1939 c 187 § 6; RRS § 10726-6.]

89.08.200 Supervisors—Term, vacancies, removal, etc.—Compensation. The term of office of each supervisor shall be three years and until his successor is appointed or elected and qualified, except that the supervisors first appointed shall serve for one and two years respectively from the date of their appointments, as designated in their appointments.

In the case of elected supervisors, the term of office of each supervisor shall be three years and until his successor is elected and qualified, except that for the first election, the one receiving the largest number of votes shall be elected for three years; the next largest two years; and the third largest one year. Successors shall be elected for three-year terms.

Vacancies in the office of appointed supervisors shall be filled by the state conservation commission. Vacancies in the office of elected supervisors shall be filled by appointment made by the remaining supervisors for the unexpired term.

A majority of the supervisors shall constitute a quorum and the concurrence of a majority is required for any official action or determination.

Supervisors shall serve without compensation, but they shall be entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. A supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The governing board shall designate a chairman from time to time. [1973 1st ex.s. c 184 § 21; 1961 c 240 § 12; 1955 c 304 § 21. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

89.08.210 Powers and duties of supervisors. The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and determine their qualifications, duties, and compensation. It may call upon the attorney general for legal services, or may employ its own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as it deems proper. The supervisors shall furnish to the commission, upon request, copies of such internal rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as the commission may require in the performance of its duties under *this 1973 amendatory act. The supervisors shall provide for the execution of surety bonds for officers and all employees who shall be entrusted with funds or property.

The supervisors shall provide for the keeping of a full and accurate record of all proceedings, resolutions, regulations, and orders issued or adopted. The supervisors shall provide for an annual audit of the accounts of receipts and disbursements in accordance with procedures prescribed by regulations of the commission.

The board may invite the legislative body of any municipality or county near or within the district, to designate a representative to advise and consult with it on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. The governing body of a district shall appoint such advisory committees as may be needed to assure the availability of appropriate channels of communication to the board of supervisors, to persons affected by district operations, and to local, regional, state and interstate special-purpose districts and agencies responsible for community planning, zoning, or other resource development activities. The district shall keep such committees informed of its work, and such advisory committees shall submit recommendations from time to time to the board of supervisors. [1973 1st ex.s. c 184 § 22; 1955 c 304 § 22. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

***Reviser's note:** "This 1973 amendatory act", see note following RCW 89.08.020.

89.08.220 Corporate status and powers of district. A conservation district organized under the provisions of *this 1973 amendatory act shall constitute a governmental subdivision of this state, and a public body corporate and politic exercising public powers, but shall not levy taxes or issue bonds and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of *this 1973 amendatory act:

(1) To conduct surveys, investigations, and research relating to the conservation of renewable natural resources and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct educational and demonstrational projects on any lands within the district upon obtaining the consent of the occupier of such lands and such necessary rights or interests in such lands as may be required in order to demonstrate by example the means, methods, measures, and works of improvement by which the conservation of renewable natural resources may be carried out;

(3) To carry out preventative and control measures and works of improvement for the conservation of renewable natural resources, within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of

lands, and the measures listed in RCW 89.08.010, on any lands within the district upon obtaining the consent of the occupier of such lands and such necessary rights or interests in such lands as may be required;

(4) To cooperate or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of preventive and control measures and works of improvement for the conservation of renewable natural resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of *this 1973 amendatory act;

(5) To obtain options upon and to acquire in any manner, except by condemnation, by purchase, exchange, lease, gift, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of *this 1973 amendatory act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of *this act;

(6) To make available, on such terms, as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and such other equipment and material as will assist them to carry on operations upon their lands for the conservation of renewable natural resources;

(7) To prepare and keep current a comprehensive long-range program recommending the conservation of all the renewable natural resources of the district. Such programs shall be directed toward the best use of renewable natural resources and in a manner that will best meet the needs of the district and the state, taking into consideration, where appropriate, such uses as farming, grazing, timber supply, forest, parks, outdoor recreation, potable water supplies for urban and rural areas, water for agriculture, minimal flow, and industrial uses, watershed stabilization, control of soil erosion, retardation of water run-off, flood prevention and control, reservoirs and other water storage, restriction of developments of flood plains, protection of open space and scenery, preservation of natural beauty, protection of fish and wildlife, preservation of wilderness areas and wild rivers, the prevention or reduction of sedimentation and other pollution in rivers and other waters, and such location of highways, schools, housing developments, industries, airports and other facilities and structures as will fit the needs of the state and be consistent with the best uses of the renewable natural resources of the state. The program shall include an inventory of all renewable natural resources in the district, a compilation of current resource needs, projections of future resource requirements, priorities for various resource activities, projected timetables, descriptions of available alternatives, and provisions for coordination with other resource programs.

The district shall also prepare an annual work plan, which shall describe the action programs, services, facilities, materials, working arrangements and estimated funds needed to carry out the parts of the long-range programs that are of the highest priorities.

The districts shall hold public hearings at appropriate times in connection with the preparation of programs and plans, shall give careful consideration to the views expressed and problems revealed in hearings, and shall keep the public informed concerning their programs, plans, and activities. Occupiers of land shall be invited to submit proposals for consideration to such hearings. The districts may supplement such hearings with meetings, referenda and other suitable means to determine the wishes of interested parties and the general public in regard to current and proposed plans and programs of a district. They shall confer with public and private agencies, individually and in groups, to give and obtain information and understanding of the impact of district operations upon agriculture, forestry, water supply and quality, flood control, particular industries, commercial concerns and other public and private interests, both rural and urban.

Each district shall submit to the commission its proposed long-range program and annual work plans for review and comment.

The long-range renewable natural resource program, together with the supplemental annual work plans, developed by each district under the foregoing procedures shall have official status as the authorized program of the district, and it shall be published by the districts as its "renewable resources program". Copies shall be made available by the districts to the appropriate counties, municipalities, special purpose districts and state agencies, and shall be made available in convenient places for examination by public land occupier or private interest concerned. Summaries of the program and selected material therefrom shall be distributed as widely as feasible for public information;

(8) To administer any project or program concerned with the conservation of renewable natural resources located within its boundaries undertaken by any federal, state, or other public agency by entering into a contract or other appropriate administrative arrangement with any agency administering such project or program;

(9) Cooperate with other districts organized under *this 1973 amendatory act in the exercise of any of its powers;

(10) To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other source, and to use or expend such moneys, services, materials, or any contributions in carrying out the purposes of *this act;

(11) To sue and be sued in the name of the district; to have a seal which shall be judicially noticed; have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to borrow money and to pledge, mortgage

and assign the income of the district and its real or personal property therefor; and to make, amend rules and regulations not inconsistent with *this 1973 amendatory act and to carry into effect its purposes;

(12) Any two or more districts may engage in joint activities by agreement between or among them in planning, financing, constructing, operating, maintaining, and administering any program or project concerned with the conservation of renewable natural resources. The districts concerned may make available for purposes of the agreement any funds, property, personnel, equipment, or services available to them under *this 1973 amendatory act;

Any district may enter into such agreements with a district or districts in adjoining states to carry out such purposes if the law in such other states permits the districts in such states to enter into such agreements.

The commission shall have authority to propose, guide, and facilitate the establishment and carrying out of any such agreement;

(13) Every district shall, through public hearings, annual meetings, publications, or other means, keep the general public, agencies and occupiers of land within the district, informed of the works and activities planned and administered by the district, of the purposes these will serve, of the income and expenditures of the district, of the funds borrowed by the district and the purposes for which such funds are expended, and of the results achieved annually by the district; and

(14) The supervisors of conservation districts may designate an area, state, and national association of conservation districts as a coordinating agency in the execution of the duties imposed by this chapter, and to make gifts in the form of dues, quotas, or otherwise to such associations for costs of services rendered, and may support and attend such meetings as may be required to promote and perfect the organization and to effect its purposes. [1973 1st ex.s. c 184 § 23; 1963 c 110 § 1; 1961 c 240 § 13; 1955 c 304 § 23. Prior: (i) 1939 c 187 § 8; RRS § 10726-8. (ii) 1939 c 187 § 13; RRS § 10726-13.]

*Reviser's note: "This act" and "this 1973 amendatory act", see note following RCW 89.08.020.

89.08.341 Intergovernmental cooperation—Authority. Any agency of the government of this state and any local political subdivision of this state is hereby authorized to make such arrangements with any district, through contract, regulation or other appropriate means, wherever it believes that such arrangements will promote administrative efficiency or economy.

In connection with any such arrangements, any state or local agency or political subdivision of this state is authorized, within the limits of funds available to it, to contribute funds, equipment, property or services to any district; and to collaborate with a district in jointly planning, constructing, financing or operating any work or activity provided for in such arrangements and in the joint acquisition, maintenance and operation of equipment or facilities in connection therewith.

State agencies, the districts, and other local agencies are authorized to make available to each other maps, reports and data in their possession that are useful in the preparation of their respective programs and plans for resource conservation. The districts shall keep the state and local agencies fully informed concerning the status and progress of the preparation of their resource conservation programs and plans.

The state conservation commission and the counties of the state may provide respective conservation districts such administrative funds as will be necessary to carry out the purpose of *this 1973 amendatory act. [1973 1st ex.s. c 184 § 24.]

*Reviser's note: "This 1973 amendatory act", see note following RCW 89.08.020.

89.08.350 Petition to dissolve district—Election. At any time after five years from the organization of a district, one hundred land occupiers in the district may file with the commission a petition, praying that the district be dissolved. The commission may hold public hearings thereon, and within sixty days from receipt of the petition, shall give due notice of an election on the question of dissolution. It shall provide appropriate ballots, conduct the election, canvass the returns, and declare the results in the same manner as for elections to create a district.

All district electors may vote at the election. No informality relating to the election shall invalidate it if notice is substantially given and the election is fairly conducted. [1973 1st ex.s. c 184 § 25; 1955 c 304 § 25. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

89.08.360 Result of election—Determination of practicability. If a majority of the votes cast at the election are for dissolution, the district shall be dissolved. If two-thirds of the votes are against dissolution, the commission shall determine whether the continuance of the district is practicable. In making the determination it shall consider all the factors considered by it in determining that the district was practicable originally. If it finds that further operation of the district is impracticable it shall order it dissolved and certify its determination to the supervisors. [1973 1st ex.s. c 184 § 26; 1955 c 304 § 26. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

89.08.370 Disposition of affairs upon dissolution. If the district is ordered dissolved, the supervisors shall forthwith terminate the affairs of the district and dispose of all district property at public auction, and pay the proceeds therefrom to the state treasurer.

They shall then file a verified application with the secretary of state for the dissolution of the district, accompanied by a certificate of the commission reciting the determination that further operation of the district is impracticable. The application shall recite that the property of the district has been disposed of, that the proceeds therefrom have been paid to the treasurer, and contain a full accounting of the property and proceeds. Thereupon the secretary shall issue to the supervisors a

certificate of dissolution and file a copy thereof in his records. [1973 1st ex.s. c 184 § 27; 1955 c 304 § 27. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

89.08.380 Effect of dissolution—Commission substituted. A dissolution of a district shall not affect any contracts or obligations of the district. Upon the issuance of the certificate of dissolution, the commission shall be substituted for the supervisors and it shall assume all the duties, liabilities, and powers of the supervisors.

When a petition for the dissolution of a district is rejected, no new petition may be filed for a period of five years. [1973 1st ex.s. c 184 § 28; 1955 c 304 § 28. Prior: 1939 c 187 § 15, part; RRS § 10726-15, part.]

89.08.390 Water rights preserved—1939 c 187. Insofar as any of the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling: *Provided, however,* That none of the provisions of this chapter shall be construed so as to impair water rights appurtenant to lands within or without the boundaries of any district or districts organized hereunder. [1939 c 187 § 17; RRS § 10726-17.]

89.08.391 Water rights preserved—1973 1st ex.s. c 184. Insofar as any of the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling: *Provided, however,* That none of the provisions of this chapter shall be construed so as to impair water rights appurtenant to lands within or without the boundaries of any district or districts organized hereunder. [1973 1st ex.s. c 184 § 30.]

89.08.900 Severability—1939 c 187. If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [1939 c 187 § 16; RRS § 10726-16.]

89.08.901 Severability—1973 1st ex.s. c 184. If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [1973 1st ex.s. c 184 § 31.]

Chapter 89.12

RECLAMATION AND IRRIGATION DISTRICTS IN UNITED STATES RECLAMATION AREAS

Sections	
89.12.010	Preamble.
89.12.020	Definitions.
89.12.030	Applicability and purpose of chapter.
89.12.040	Units and legal subdivisions authorized—Size—Plats—Excess land.
89.12.050	Contracts with United States—Permissible provisions.

- 89.12.060 Covenants running with the land—Contract provisions to govern.
- 89.12.071 Fraudulent and unlawful conveyances—Preservation of rights acquired prior to repeal of RCW 89.12.070.
- 89.12.080 Instruments may be filed—Filing imparts notice.
- 89.12.090 State lands in district—State consent to assessment, conditions.
- 89.12.100 State lands—Terms and conditions of sale.
- 89.12.110 County lands—Contracts with United States.
- 89.12.120 Acceptance of federal act—Assessment and taxation authorized.
- 89.12.131 Adoption of Columbia Basin project act—Revocation of state's consent.
- 89.12.140 Subdivision and sale of state lands in reclamation project.
- 89.12.150 Exchange of state and federal lands.
- 89.12.160 Establishment of county road system.

89.12.010 Preamble. It is the policy of the state of Washington in connection with lands within the scope of this chapter which may be irrigated through works of federal reclamation projects, to assist the United States in the reduction or prevention of speculation in such lands and in limiting the size of the holdings thereof entitled to receive water by means of the works of such projects, and otherwise to cooperate with the United States with respect thereto. [1957 c 165 § 1; 1943 c 275 § 1; Rem. Supp. 1943 § 7525–20.]

Severability—1943 c 275: "Each section and provision of this act shall be considered separable from every other section and provision of the act, and should any section or provision thereof be held unconstitutional, the unconstitutionality of such section or provision shall not affect or impair the validity of the remainder of the act, but in that event the unconstitutional section or provision shall be eliminated and the remainder of the act remain in full force and effect." [1943 c 275 § 16.]

89.12.020 Definitions. As used in this chapter,

The term "secretary" shall mean the secretary of the interior of the United States, or his duly authorized representative.

The term "appraised value" shall mean the value of lands within the scope of this chapter appraised or reappraised by the secretary without reference to or increment on account of the irrigation works built or to be built by the United States.

The term "district" shall mean an irrigation or reclamation district governed by this chapter as provided in RCW 89.12.030.

The term "federal reclamation laws" shall mean the act of congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto including the act of congress entitled "An Act to amend the Act approved May 27, 1937 (Ch. 269, 50 Stat. 208), by providing substitute and additional authority for the prevention of speculation in lands of the Columbia Basin project, and substitute an additional authority related to the settlement and development of the project, and for other purposes, enacted and approved in the Seventy-Eighth Session."

The term "lands" shall mean, unless otherwise indicated, lands within the boundaries of a district contracting or intending to contract with the United States under the terms of this chapter.

The term "owner," "landowner," and "any one landowner" shall mean any person, corporation, joint stock

association or family owning lands that are within the scope of this chapter.

The term "family" shall mean a group consisting of either or both husband and wife, together with their children under eighteen years of age, or all of such children if both parents are dead, the term "their children" including the issue and lawfully adopted children of either or both husband and wife. Within the meaning of this chapter, lands shall be deemed to be held by a family if held as separate property of husband or wife, or if held as a part or all of their community property, or if they are the property of any or all of their children under eighteen years of age. [1943 c 275 § 3; Rem. Supp. 1943 § 7525–22.]

89.12.030 Applicability and purpose of chapter. The provisions of this chapter shall be applicable to any irrigation or reclamation district organized under the laws of this state contracting or intending to contract with the United States under the federal reclamation laws with respect to a water supply for irrigation from the Columbia Basin project or from any project or division of a project hereafter undertaken in this state by the United States under those laws, and shall govern as to any lands which are now or may hereafter be included in any such district and as to the relationship between any such district and any such lands. The prospect of the construction of the irrigation features of the Columbia Basin project and of other works under the federal reclamation laws for the irrigation of lands in this state requires the granting of authority to irrigation and reclamation districts and to state and county officers to assist the United States, in accordance with the policy of this enactment, in meeting the problems of land speculation and in limiting the size of holdings of lands that may be benefited by such works, and otherwise to cooperate with the United States in connection with the irrigation of lands in this state. The provisions of this chapter, however, are supplemental to other provisions of the law of the state, not inconsistent herewith, which pertain to such districts. [1943 c 275 § 2; Rem. Supp. 1949 § 7525–21.]

89.12.040 Units and legal subdivisions authorized—Size—Plats—Excess land. In connection with a district contracting or intending to contract with the United States under this chapter, the secretary for the purpose of administering the federal reclamation laws and of providing for the delivery of water thereto, the method thereof, and the turnout therefor may segregate such lands, or any part thereof, into units and/or legal subdivisions, having in mind the character of soil, topography, method or methods of irrigation best suited therefor, location with respect to the irrigation system, type of irrigation system, and such other relevant factors as enter into the determination of the area and boundaries thereof and the method or methods of irrigating the same. Plats or revisions thereof showing the units and/or the legal subdivisions and the exclusive method or methods of irrigating such units and/or legal subdivisions or portions thereof when approved, may be filed by the

United States for record with the auditor of the county in which the land is located. Lands in excess of the acreage in the amount specified by applicable federal law as not being excess lands held by any one landowner shall be deemed excess land. [1970 ex.s. c 71 § 1; 1963 c 3 § 1; 1957 c 165 § 2; 1943 c 275 § 4; Rem. Supp. 1943 § 7525-23.]

89.12.050 Contracts with United States—Permissible provisions. A district may enter into repayment and other contracts with the United States under the terms of the federal reclamation laws in matters relating to federal reclamation projects, and may with respect to lands within its boundaries include in the contract, among others, an agreement that:

(1) The district will not deliver water by means of the project works provided by the United States to or for excess lands not eligible therefor under applicable federal law.

(2) As a condition to receiving water by means of the project works, each excess landowner in the district, unless his excess lands are otherwise eligible to receive water under applicable federal law, shall be required to execute a recordable contract covering all of his excess lands within the district.

(3) All excess lands within the district not eligible to receive water by means of the project works shall be subject to assessment in the same manner and to the same extent as lands eligible to receive water, subject to such provisions as the secretary may prescribe for postponement in payment of all or part of the assessment but not beyond a date five years from the time water would have become available for such lands had they been eligible therefor.

(4) The secretary is authorized to amend any existing contract, deed, or other document to conform to the provisions of applicable federal law as it now exists. Any such amendment may be filed for record under RCW 89.12.080. [1963 c 3 § 2; 1957 c 165 § 3; 1951 c 200 § 1; 1943 c 275 § 5; Rem. Supp. 1943 § 7525-24.]

89.12.060 Covenants running with the land—Contract provisions to govern. Any or all of the provisions which may be required to be included in recordable contracts may be made covenants running with any tract of land covered by the contract by expressly so providing therein. Recordable contracts expressly providing that any or all of such provisions shall be covenants running with the land covered thereby shall not be destroyed or extinguished by any tax or assessment foreclosure or deed issued pursuant thereto.

Such of the limitations and provisions of RCW 89.12.050 as are included in the repayment contract between the district and the United States, shall govern all the lands within the district unless otherwise provided in such contract and shall govern notwithstanding any other provisions of the laws of this state. [1963 c 3 § 3; 1953 c 148 § 1; 1943 c 275 § 6; Rem. Supp. 1943 § 7525-25.]

89.12.071 Fraudulent and unlawful conveyances—Preservation of rights acquired prior to repeal of RCW 89.12.070. The rights of any vendee or grantee as defined in section 7(b), chapter 275, Laws of 1943 as amended by section 2(b), chapter 200, Laws of 1951 and in RCW 89.12.070(2) are hereby preserved as to any transactions that were consummated by contract or deed prior to the repeal of said sections by this chapter. [1963 c 3 § 6.]

89.12.080 Instruments may be filed—Filing imparts notice. There may be filed for record in the office of the county auditor in the county in which the land lies any of the following: (1) Copies of any plat of established farm units approved by the secretary as provided in RCW 89.12.040, when authenticated in the manner authorized by law; (2) copies of any instrument, action, determination, rule or regulation of the secretary made in connection with the provisions of RCW 89.12.050 or otherwise under the federal reclamation laws and which is or may be determinative of title to lands or interest in lands, when authenticated in the manner authorized by law; and (3) any contract or instrument required to be executed by an owner, land purchaser or other person in connection with provisions incorporated in repayment contracts between a district and the United States as authorized by RCW 89.12.050. Such filing shall impart legal notice to the public of the matters and things set out therein. [1943 c 275 § 8; Rem. Supp. 1943 § 7525-27.]

89.12.090 State lands in district—State consent to assessment, conditions. Whenever a district to which this chapter applies is organized or in process of organization, the state of Washington, by and through its proper officials, is authorized and directed to have any state lands within the exterior boundaries of such district included as a part of the lands of such district. The state hereby consents to the assessment by the district of such state lands so included in any such irrigation district, and to the enforcement of the payment of such assessments in like manner and to the same extent as applicable to private lands in such districts, except that the payment of such assessment against such state lands shall not be enforced by transfer of title, by tax sale, tax foreclosure or otherwise, until the state has sold or transferred such lands to a private party. [1943 c 275 § 9; Rem. Supp. 1943 § 7525-28.]

89.12.100 State lands—Terms and conditions of sale. If state lands within a district have been segregated into farm units and the appraised value thereof established, the state shall recognize and accept the appraisal as determining the market value of such lands, and shall offer the state lands for sale for cash on the following terms and conditions:

(1) Sales shall be made only at the appraised value; (2) only the number of farm units or acreage specified by applicable federal law as not being excess lands shall be sold to any person or family; (3) applicants for the purchase of a farm unit shall be selected, as nearly as

practicable, in accordance with the provisions of subsection (C) of section 4 of the act of congress of December 5, 1924 (43 Stat. 702); and (4) each applicant shall be required to execute a recordable contract within six months from the date the state's conveyance or contract to convey is made, whichever is the earlier, if such a contract is required as a condition to the delivery of water under the terms of the district's repayment contract with the United States; except as the carrying out of any such terms or conditions as to particular state lands may be precluded by provisions of the state Constitution.

The state shall cooperate with the secretary in carrying out the purposes of this chapter and in connection therewith, may execute recordable contracts covering any state lands and such other agreements as are necessary in connection with the administration of this chapter. [1957 c 165 § 4; 1951 c 200 § 3; 1943 c 275 § 10; Rem. Supp. 1943 § 7525-29.]

89.12.110 County lands—Contracts with United States. In the case of any county owned land within any district has been segregated into farm units as provided in RCW 89.12.040 and the appraised value thereof established, the board of county commissioners of the county shall have authority at its option of entering into a contract with the United States to bring any of such county lands as the county board shall determine under the provisions of the recordable contracts provided for in RCW 89.12.040, whenever such contracts are required as a condition to the delivery of water under the terms of the contract between the district and the United States, upon such terms as shall be agreed upon between the county and the United States: *Provided*, That such contract shall not obligate the county to pay any district assessments levied against such lands except such, if any, as the board of county commissioners of said county shall elect to pay: *Provided further*, That nothing herein contained shall be construed to deprive the district of the right to assess such lands, if otherwise assessable and to enforce the collection of the same in the manner provided by law. [1943 c 275 § 11; Rem. Supp. 1943 § 7525-30.]

89.12.120 Acceptance of federal act—Assessment and taxation authorized. The provisions and limitations of subsection 5(b) and 5(c) of the act of congress, as above entitled in RCW 89.12.020, concerning assessment and taxation of lands within the Columbia Basin project while legal title remains vested in the United States are hereby accepted; and assessment and taxation by the state, political subdivisions thereof, and districts are hereby authorized to be made in accordance with such provisions and limitations. [1943 c 275 § 14; Rem. Supp. 1943 § 7525-33.]

89.12.131 Adoption of Columbia Basin project act—Revocation of state's consent. Section 15, chapter 275, Laws of 1943 as amended by section 4, chapter 200, Laws of 1951 and RCW 89.12.130 are each repealed and any adoption, enactment, or consent of this

state to the provisions of the federal act, as amended, cited therein are hereby revoked. [1963 c 3 § 5.]

89.12.140 Subdivision and sale of state lands in reclamation project. The commissioner of public lands of the state of Washington is authorized to cooperate with the secretary of the interior of the United States with a view to facilitate the execution of plans approved by the secretary of the interior for subdivision and disposal of lands under federal reclamation projects constructed or to be constructed under the provisions of the act of congress of June 17, 1902, (32 Stat., 388) and acts amendatory thereof or supplementary thereto in farm units bounded by lines considered more economical and convenient for irrigation and reclamation than the lines of legal subdivisions and for such purpose is authorized to cause to be prepared and filed a plat or plats of any state lands in any such federal reclamation project showing said state lands subdivided into blocks, lots or farm units, with boundary lines other than those of legal subdivisions, and located with a view to greater convenience, economy or efficiency in irrigation and reclamation, and such subdivision into lots, blocks or farm units may be made in harmony with any general plan approved by the secretary of the interior for subdivision of the lands of any such federal reclamation project or any part or division of any such project into blocks, lots or farm units with boundary lines other than the boundary lines of legal subdivisions and designed for more convenient, economical or efficient reclamation and irrigation. And the commissioner of public lands is authorized to offer for sale and to sell such state lands, in the lots, blocks or farm units designated on such plat or plats instead of offering and selling the same in the legal subdivisions of the U.S. public land surveys. [1927 c 246 § 1; RRS § 7402-280.]

Severability—1927 c 246: "Sections 1 and 2 of this act are each declared to be separable from the remainder of the act, and, should either of said sections be held unconstitutional or void, the remainder of the act shall nevertheless remain effective and in such event such unconstitutional section shall be eliminated without affecting the remainder of the act." [1927 c 246 § 3.]

89.12.150 Exchange of state and federal lands. From and after the date that the consent of the United States shall be given thereto by act of congress, the said commissioner of public lands is authorized, upon request from the secretary of the interior, to cause an appraisal to be made by the board of state land commissioners of state lands in any division of any federal reclamation project which the secretary of the interior shall advise the commissioner of public lands that he desires to have subdivided into farm units of class referred to in RCW 89.12.140, and also to cause to be appraised by the board of state land commissioners such public lands of the United States on the same project, or elsewhere in the state of Washington, as the secretary of the interior may propose to exchange for such state land, and when the secretary of the interior shall have secured from congress authority to make such exchange the commissioner of public lands is authorized to exchange such state lands in any federal reclamation project for public

lands of the United States on the same project or elsewhere in the state of Washington of approximately equal appraised valuation, and in making such exchange is authorized to execute suitable instruments in writing conveying or relinquishing to the United States such state lands and accepting in lieu thereof such public land of approximately equal appraised valuation. [1927 c 246 § 2; RRS § 7402-281.]

89.12.160 Establishment of county road system. See RCW 36.81.140.

Chapter 89.16

RECLAMATION BY STATE

Sections

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89.16.020	Reclamation account created—Composition.
89.16.040	Payments from account—Reclamation districts specified—Rehabilitation of existing projects.
89.16.045	Loans from account—Contracts—Repayment.
89.16.050	Powers and duties of director of ecology.
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89.16.060	Contracts with United States.
89.16.070	Contracts with districts.
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89.16.130	Severability—1919 c 158.
89.16.131	Severability—1972 ex.s. c 51.
89.16.500	Exemption from diking and drainage requirements of emergency recovery operations from Mt. St. Helens eruption authorized—Exception—Expiration of section.

Reviser's note: Throughout this chapter several references are made to the "reclamation fund" and "reclamation revolving fund"; such fund was abolished and the moneys therein transferred to the "reclamation revolving account" in the general fund. See 1955 c 370 § 1; RCW 43.79.330. As to the references to officers and agencies, see note following title digest.

89.16.005 Short title. This chapter shall be known and cited as the "State Reclamation Act". [1919 c 158 § 1; RRS § 3004.]

89.16.010 Declaration of purpose. The object of this chapter is to provide for the reclamation and development of such lands in the state of Washington as shall be determined to be suitable and economically available for reclamation and development as agricultural lands, and the state of Washington in the exercise of its sovereign and police powers declares the reclamation of such lands to be a state purpose and necessary to the public health, safety and welfare of its people. [1972 ex.s. c 51 § 1; 1919 c 158 § 2; RRS § 3005.]

89.16.020 Reclamation account created—Composition. For the purpose of carrying out the provisions of this chapter the state reclamation revolving account, heretofore established and hereinafter called the reclamation account, shall consist of all sums appropriated thereto by the legislature; all gifts made to the state therefor and the proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by securities acquired with the moneys thereof;

and all reimbursements for moneys advanced for the payment of assessments upon public lands of the state for the improvement thereof. [1973 1st ex.s. c 40 § 1; 1972 ex.s. c 51 § 2; 1959 c 104 § 2. Prior: 1919 c 158 § 4, part; RRS § 3007, part.]

89.16.040 Payments from account—Reclamation districts specified—Rehabilitation of existing projects. From the moneys appropriated from the reclamation account there shall be paid, upon vouchers approved by the director of ecology, the administrative expenses of the director under this chapter and such amounts as are found necessary for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the director, and such amounts as may be authorized by him for the reclamation of lands in diking, diking improvement, drainage, drainage improvement, diking and drainage, diking and drainage improvement, irrigation and irrigation improvement districts, and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts. [1981 c 216 § 2; 1972 ex.s. c 51 § 3; 1959 c 104 § 4. Prior: 1919 c 158 § 4, part; RRS § 3007, part.]

89.16.045 Loans from account—Contracts—Repayment. Notwithstanding any other provisions of this chapter, the director of ecology may, by written contract with a reclamation district, loan moneys from the reclamation account to said district for use in financing a project of construction, reconstruction or improvement of district facilities, or a project of additions to such facilities. No such contract shall exceed fifty thousand dollars per project or a term of ten years, or provide for an interest rate of more than eight percent per annum. The director shall not execute any contract as provided in this section until he determines that the project for which the moneys are furnished is within the scope of the district's powers to undertake, that the project is feasible, that its construction is in the best interest of the state and the district, and that the district proposing the project is in a sound financial condition and capable of repaying the loan with interest in not more than ten annual payments. Any district is empowered to enter into a contract, as provided for in this section, and to levy assessments based on the special benefits accruing to lands within the district as are necessary to satisfy the contract, when a resolution of the governing body of the reclamation district authorizing its execution is approved by the body: *Provided*, That no district shall be empowered to execute with the director any such contract during the term of any previously executed contract authorized by this section. [1972 ex.s. c 51 § 4; 1967 c 181 § 1.]

89.16.050 Powers and duties of director of ecology. In carrying out the purposes of this chapter, the director of the department of ecology of the state of Washington shall be authorized and empowered:

To make surveys and investigations of the wholly or partially unreclaimed and undeveloped lands in this state and to determine the relative agricultural values, productiveness and uses, and the feasibility and cost of reclamation and development thereof;

To formulate and adopt a sound policy for the reclamation and development of the agricultural resources of the state, and from time to time select for reclamation and development such lands as may be deemed advisable, and the director may in his discretion advise as to the formation and assist in the organization of reclamation districts under the laws of this state;

To purchase the bonds of any reclamation district whose project is approved by the director and which is found to be upon a sound financial basis, to contract with any such district for making surveys and furnishing engineering plans and supervision for the construction of its project, or for constructing or completing its project and to advance money to the credit of the district for any or all of such purposes, and to accept the bonds, notes or warrants of such district in payment therefor, and to expend the moneys appropriated from the reclamation account in the purchase of such bonds, notes or warrants or in carrying out such contracts: *Provided*, That interest not to exceed the annual rate provided for in the bonds, notes or warrants agreed to be purchased, shall be charged and received for all moneys advanced to the district prior to the delivery of the bonds, notes or warrants and the amount of such interest shall be included in the purchase price of such bonds, notes or warrants: *Provided further*, That no district, the bonds, notes or warrants of which have been purchased by the state under the provisions of the state reclamation act, shall thereafter during the life of said bonds, notes or warrants make expenditures of any kind from the bond or warrant funds of the district or incur obligations chargeable against such funds or issue any additional notes without previous written approval of the director of ecology of the state of Washington, and any obligations incurred without such approval shall be void;

To sell and dispose of any reclamation district bonds acquired by the director, at public or private sale, and to pay the proceeds of such sale into the reclamation account: *Provided*, That such bonds shall not be sold for less than the purchase price plus accrued interest, except in case of a sale to an agency supplied with money by the United States of America, or to the United States of America in furtherance of refunding operations of any irrigation district, diking or drainage district, or diking or drainage improvement district, now pending or hereafter carried on by such district, in which case the director shall have authority to sell any bonds of such district owned by the state of Washington under the provisions of the state reclamation act, to the United States of America, or other federal agency on such terms as said United States of America, or other federal agency shall prescribe for bonds of the same issue of such district as that held by the state of Washington in connection with such refunding operations;

To borrow money upon the security of any bonds, including refunding bonds, of any reclamation district, acquired by the director, on such terms and rate of interest and over such period of time as the director may see fit, and to hypothecate and pledge reclamation district bonds or refunding bonds acquired by the director as security for such loan. Such loans shall have, as their sole security, the bonds so pledged and the revenues therefrom, and the director shall not have authority to pledge the general credit of the state of Washington: *Provided*, That in reloading any money so borrowed, or obtained from a sale of bonds it shall be the duty of the director to fix such rates of interest as will prevent impairment of the reclamation revolving account;

To purchase delinquent general tax or delinquent special assessment certificates chargeable against lands included within any reclamation district obligated to the state under the provisions of the state reclamation act, and to purchase lands included in such districts and placed on sale on account of delinquent taxes or delinquent assessments with the same rights, privileges and powers with respect thereto as a private holder and owner of said certificates, or as a private purchaser of said lands: *Provided*, That the director shall be entitled to a delinquent tax certificate upon application to the proper county treasurer therefor without the necessity of a resolution of the county legislative authority authorizing the issuance of certificates of delinquency required by law in the case of the sale of such certificates to private purchasers;

To sell said delinquent certificates or the lands acquired at sale on account of delinquent taxes or delinquent assessments at public or private sale, and on such conditions as the director shall determine;

To, whenever the director shall deem it advisable, require any district with which he may contract, to provide such safeguards as he may deem necessary to assure bona fide settlement and development of the lands within such district, by securing from the owners of lands therein agreements to limit the amount of their holdings to such acreage as they can properly farm and to sell their excess land holdings at reasonable prices;

To employ all necessary experts, assistants and employees and fix their compensation and to enter into any and all contracts and agreements necessary to carry out the purposes of this chapter;

To have the assistance, cooperation and services of, and the use of the records and files in, all the departments and institutions of the state, particularly the office of the commissioner of public lands, the state department of agriculture, Washington State University, and the University of Washington; and all state officers and the governing authorities of all state institutions are hereby authorized and directed to cooperate with the director in furthering the purpose of this chapter;

To cooperate with the United States in any plan of land reclamation, land settlement or agricultural development which the congress of the United States may provide and which may effect the development of agricultural resources within the state of Washington, and

the director shall have full power to carry out the provisions of any cooperative land settlement act that may be enacted by the United States. [1983 c 167 § 248; 1977 c 75 § 93; 1972 ex.s. c 51 § 5; 1943 c 279 § 1; 1935 c 7 § 1; 1933 ex.s. c 13 § 1; 1923 c 132 § 1; 1919 c 158 § 5; RRS § 3008.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

89.16.055 Additional powers and duties enumerated—Payment for from reclamation account. In addition to the powers provided in RCW 89.16.050, the department of ecology is authorized and empowered to:

(1) Conduct surveys, studies, investigations, and water right examinations for proposed reclamation projects or the rehabilitation of existing reclamation projects that may be funded fully or partially from the receipts of the sale of bonds issued by the state of Washington.

(2) Support the preparation for and administration of proceedings, provided in RCW 90.03.110 or 90.44.220, or both, pertaining to river systems or other water bodies that are associated with existing or proposed reclamation projects.

Funds of the account established by RCW 89.16.020 may, as appropriated by the legislature, be used in relation to the powers provided in this section, notwithstanding any other provisions of chapter 89.16 RCW that may be to the contrary. [1981 c 216 § 1.]

89.16.060 Contracts with United States. The department of ecology shall have the power to cooperate and to contract with the United States for the reclamation of lands in this state by the United States, and shall have the power to contract with the United States for the handling of such reclamation work by the United States and for the repayment of such moneys as the department of ecology shall invest from the reclamation account, under such terms and conditions as the United States laws and the regulations of the interior department shall provide for the repayment of reclamation costs by the lands reclaimed. [1972 ex.s. c 51 § 6; 1919 c 158 § 6; RRS § 3009.]

89.16.070 Contracts with districts. A diking, drainage, diking and drainage, and irrigation district, and improvement districts thereof through the parent district, or such other district as is authorized and organized for the reclamation or development of waste or undeveloped lands, may enter into contracts with the director for the reclamation of the lands of the district in the manner provided herein, or in such manner as such districts may contract with the United States or with individuals or corporations, for making surveys and furnishing engineering plans and supervision for the construction of all works and improvements necessary for the reclamation of its lands, and for the sale or delivery of its bonds, and may issue bonds of the district for such purposes. [1959 c 104 § 5; 1923 c 132 § 2; 1919 c 158 § 7; RRS § 3010.]

89.16.080 State lands may be included—Procedure. Whenever in the judgment of the department of

natural resources any state, school, granted, or other public lands of the state will be specially benefited by any proposed reclamation project approved by the department of ecology, it may consent that such lands be included in any reclamation district organized for the purpose of carrying out such reclamation project, and in that event the department of natural resources shall be authorized to pay, out of current appropriations, the district assessments levied as provided by law against such lands, and any such assessments paid shall be made a charge against the lands upon which they were levied, and the amount thereof, but without interest, shall be included in the appraised value of such lands when sold or leased. [1972 ex.s. c 51 § 7; 1919 c 158 § 8; RRS § 3011.]

89.16.130 Severability—1919 c 158. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. [1919 c 158 § 14; RRS § 3017.]

89.16.131 Severability—1972 ex.s. c 51. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1972 ex.s. c 51 § 8.]

89.16.500 Exemption from diking and drainage requirements of emergency recovery operations from Mt. St. Helens eruption authorized—Exception—Expiration of section. Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01-.150, 43.01.200, and 43.01.210, other than the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers, may be exempted by the applicable county legislative authority from the requirements related to diking and drainage under the department of ecology, for operations within such county: *Provided*, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology.

This section shall expire on June 30, 1990. [1985 c 307 § 8; 1983 1st ex.s. c 1 § 5; 1982 c 7 § 6.]

Severability—1983 1st ex.s. c 1: See note following RCW 43.01.200.

Severability—1982 c 7: See note following RCW 36.01.150.

Chapter 89.30

RECLAMATION DISTRICTS OF ONE MILLION ACRES

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89.30.814	Jurisdiction of courts—Motion and order for new trial.
89.30.817	Jurisdiction of courts—Action in rem—Power of court.
89.30.820	Jurisdiction of courts—Errors disregarded—Approval in whole or part.
89.30.823	Jurisdiction of courts—Conclusiveness of judgment.
89.30.826	Jurisdiction of courts—Costs.
89.30.829	Jurisdiction of courts—Time for appeal.
89.30.832	Liberal construction.
89.30.835	Severability—1927 c 254.

89.30.001 District authorized—Area not less than one million acres—No fees. Reclamation districts including an area of not less than one million acres of land may be created and maintained in this state, as herein provided, for the reclamation and improvement of arid and semiarid lands situated in such districts, and for the generation and/or sale of hydroelectric energy: *Provided*, That no appropriation, license, filing, recording, examination or other fee or fees, as provided in RCW 90.16.050 through 90.16.090 or in RCW 90.03.470 shall be applicable to a district or districts created under this chapter. [1933 c 149 § 1; 1927 c 254 § 1; RRS § 7402-1. Formerly RCW 89.20.020 and 89.20.040, part.]

89.30.004 Lands in one or more counties. Such reclamation districts may include all or part of the territory of any county and may combine the territory in two or more counties, in which any of the lands to be reclaimed and improved are situated, or in which hydroelectric energy may be generated in connection with project works. [1933 c 149 § 2; 1927 c 254 § 2; RRS § 7402-2. Formerly RCW 89.20.200.]

89.30.007 General purposes of district. Such reclamation districts may be organized or maintained for any or all the following general purposes:

(1) The construction or purchase and the operation and maintenance of dams, power and pumping works, transmission power lines, reservoirs, pipe lines, and other works or parts of same for the irrigation of lands within the operation of the district or districts and for the transmission and sale of power generated by such works.

(2) The reconstruction, repair or improvement of existing irrigation works.

(3) The operation or maintenance of existing irrigation works.

(4) The construction, reconstruction, repair or maintenance of a system of diverting canals or conduits, from a natural source of water supply to the point of individual distribution for irrigation purposes.

(5) The execution and performance of any contract authorized by law with any department of the United States or any state therein for power, reclamation and irrigation purposes.

(6) The performance of all things necessary to enable the district or districts to exercise the powers granted in this chapter.

(7) That no permits or licenses for the appropriation of water for irrigation and/or power purposes shall be granted by the state of Washington which will interfere with the irrigation and/or power requirements of the district or districts created under this chapter. [1933 c 149 § 3; 1927 c 254 § 3; RRS § 7402-3. Formerly RCW 89.20.030 and 89.20.040, part.]

89.30.010 Petition—Filing. Whenever fifty, or a majority of the holders of title to, or of evidence of title to, lands susceptible of irrigation in each of the several counties in which lands coming within the proposed district are located, desire to organize an irrigation [reclamation] district for any, or all, of the purposes mentioned in RCW 89.30.007, they may propose the organization of an irrigation [reclamation] district by filing a petition signed by the required number of holders of title, or evidence of title, to land within the proposed district with the board of county commissioners of the county in which the greatest portion of the land susceptible of irrigation, to be included in the proposed district, is located. [1933 c 149 § 4; 1927 c 254 § 4; RRS § 7402-4. Formerly RCW 89.20.500.]

89.30.013 Petition—Contents. Said petition shall describe the lands proposed to be irrigated in township and ranges and in case of smaller bodies of land, in legal subdivisions or fractions thereof, shall give the name of the county in which said respective irrigable lands are situated, and shall state all the possible sources of water supply from which said lands can be irrigated: *Provided*, That nothing herein contained shall be construed to limit the power of any district organized under the provisions of this chapter to utilize any other source of water supply not mentioned in the petition. Said petition shall also define the boundaries of the proposed district, which said boundaries shall include all of the lands, a major portion of which can be irrigated from the proposed sources of water supply, shall give the name by which the petitioners desire the district to be designated and shall state that the petitioners desire to have the territory included within the boundaries defined, organized into a reclamation district under the provisions of this chapter. [1927 c 254 § 5; RRS § 7402-5. Formerly RCW 89.20.510.]

89.30.016 Public lands of state may be included. State, granted, school or other public lands of the state of Washington may be included in such districts, and may be included in any general improvement district or divisional district authorized herein within the reclamation district and subjected to special assessments for general improvement or divisional district purposes. [1927 c 254 § 6; RRS § 7402-6. Formerly RCW 89.20.210.]

89.30.019 Interest in public lands treated as private property—Public title unaffected, liens barred. All leases, contracts, or other form of holding any interest in

any state or public land shall be treated as the private property of the lessee or owner of the contractual or possessory interest; *Provided*, That nothing in this chapter shall be construed to affect the title of the state or other public ownership, nor shall any lien for assessments or taxes attach to the fee simple title of the state or other public ownership. [1927 c 254 § 7; RRS § 7402-7. Formerly RCW 89.20.220.]

89.30.022 Federal lands may be included. Lands of the federal government may be included within such districts; and such lands may be included in any general improvement or divisional district authorized herein, in the manner and subject to the conditions specified in the statutes of the United States. [1927 c 254 § 8; RRS § 7402-8. Formerly RCW 89.20.230.]

89.30.025 Possessory interest in federal lands—Water rent, credit for prior payment. Lands held by private persons under possessory rights from the federal government may be included within the operation of the district, and as soon as such lands are held under title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other landowners upon payment by him of such sums as shall be determined by the district board and at the time to be fixed by said district board, which sum shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [1927 c 254 § 9; RRS § 7402-9. Formerly RCW 89.20.240.]

89.30.028 Petitioners to describe their lands—Petitioners deemed owners thereof. Persons signing said petition shall state following their respective names, in a place provided in said petition for that purpose, the legal description of the lands owned by them and the estimated irrigable acreage contained in the same: *Provided*, That the petitioners shall be prima facie deemed to be the owners of lands susceptible of irrigation for the purposes of the petition in the absence of evidence to the contrary submitted prior to the day of the hearing hereinafter provided for on said petition. [1927 c 254 § 10; RRS § 7402-10. Formerly RCW 89.20.520.]

89.30.031 Proof of ownership by tax roll. The ownership of land of any of the petitioners may be shown by the county general tax roll of the county in which such land is situated, last equalized prior to the time of the filing of said petition with the county board. Any item on said assessment roll may be proved by a certificate of the county officer having the custody of said tax roll at the time of making said certificate. [1927 c 254 § 11; RRS § 7402-11. Formerly RCW 89.20.530.]

89.30.034 Petition on separate sheets—Withdrawals. The petition for organization of such reclamation district shall consist of any number of separate instruments of uniform similarity, numbered consecutively. For convenience, lands represented on said instruments may be grouped separately according to the county in which said lands are situated. No petitioner shall have the right to withdraw his name from the petition after the same has been filed with said county board. [1927 c 254 § 12; RRS § 7402-12. Formerly RCW 89.20.540.]

89.30.037 Correction of deficient petition. If it shall appear that said petition or any part thereof does not contain the matters and things required by the statute, said county board shall make an order specifying the deficiency and shall return said petition or the part thereof found to be deficient to the persons filing the same. [1927 c 254 § 13; RRS § 7402-13. Formerly RCW 89.20.550.]

89.30.040 Conflicting petitions—Largest territory considered first. In the event that more than one petition for the organization of a reclamation district covering any of the same territory, is filed with the same board or with different boards of county commissioners prior to the date of the issuance of the order fixing the time and place for a hearing on one of said petitions as herein provided, the petition covering the largest territory shall first be determined and voted upon by the electors concerned. [1927 c 254 § 14; RRS § 7402-14. Formerly RCW 89.20.560.]

89.30.043 Order for hearing—Notice. If and when said county board finds that the petition is sufficient it shall enter an order to that effect and shall fix a time and place for a hearing on said petition which said time shall be not less than thirty days nor more than ninety days from the date of said order and shall direct the clerk of the board to publish notice of said hearing, setting forth the matters and things hereinafter required in a newspaper of general circulation published in each county in which any lands to be included in the district are situated. If there should be no newspaper of general circulation published in any county involved, then the county board shall designate some newspaper of general circulation published outside said county for the publication of said notice as to the lands situated in said county. [1927 c 254 § 15; RRS § 7402-15. Formerly RCW 89.20.570, part.]

89.30.046 Publication of notice. Said notice shall be published once a week for at least two weeks (three issues) before the time when the hearing on said petition is to be held. [1927 c 254 § 16; RRS § 7402-16. Formerly RCW 89.20.570, part.]

89.30.049 Contents of notice. Said notice shall state that a petition has been filed with said county board for the purpose of creating a reclamation district under the provisions of this chapter and may be inspected during

office hours by any interested person, shall specify the boundaries of the district proposed in the petition, shall mention the time and place of hearing on said petition and shall state that all persons having or claiming any interest in said land, or any part thereof, and all persons otherwise interested are required at or before the time of said hearing to file in writing with the clerk of the county board such objections as they may have, if any, to the creation of said district. Said notice shall be signed by the clerk of the board. [1927 c 254 § 17; RRS § 7402-17. Formerly RCW 89.20.590.]

89.30.052 Copy of notice to each member of commission. Said clerk shall also mail a copy of said notice to each member of the commission hereinafter provided for, at least two weeks before the day of said hearing. [1927 c 254 § 18; RRS § 7402-18. Formerly RCW 89.20.580.]

89.30.055 Commission—Creation—Composition. Upon the giving of notice of hearing on the petition by the clerk of the county board aforesaid, there is hereby authorized and created a commission composed of the chairman of the board of county commissioners of each of the counties in which any of the lands to be included in the proposed reclamation district are situated, and of the state director of conservation and development and/or such members of the Columbia Basin commission or its representatives as may by him be designated, which commission shall consider and determine said petition. [1933 c 149 § 5; 1927 c 254 § 19; RRS § 7402-19. Formerly RCW 89.20.700.]

Columbia Basin commission: Chapter 43.49 RCW.

89.30.058 Commission—Chairman—Clerk—Quorum. The state director of conservation and development, or a member of the Columbia Basin commission designated by him, shall be ex officio chairman of said commission, and the clerk of the county board of the county in which the petition is filed, shall be ex officio clerk of said commission. A majority of the members of said commission shall constitute a quorum for the transaction or exercise of any of its powers, functions, duties and business. [1933 c 149 § 6; 1927 c 254 § 20; RRS § 7402-20. Formerly RCW 89.20.710, part.]

89.30.061 Commission—Clerk not to vote unless tie. The clerk of the commission shall not be entitled to vote on matters coming before it, except in case of a tie vote of the members thereof, in which event said clerk shall cast the deciding vote. [1927 c 254 § 21; RRS § 7402-21. Formerly RCW 89.20.710, part.]

89.30.064 Commission—General powers. Said commission is hereby given full authority to receive evidence, to make independent investigation, to determine and establish the boundaries of the district, to adjourn its meeting from time to time and place to place, and to do any and all things necessary or incidental to the determination of the petition and the establishment of the

boundaries of the reclamation district. [1927 c 254 § 22; RRS § 7402-22. Formerly RCW 89.20.770.]

89.30.067 Commission—Adjournments. The period of such adjournments, however, shall not exceed ninety days in all and in case of lack of a quorum, one or more members of the commission may adjourn to a day certain and notify the absent members of the day to which said hearing was adjourned. [1927 c 254 § 23; RRS § 7402-23. Formerly RCW 89.20.740.]

89.30.070 Commission—Expenses. Except as otherwise herein provided the necessary expenses of the commission and of the members thereof in performing the duties and functions of said commission shall be borne by the respective counties concerned in proportion to the taxable value of the acreage of each included in the proposed reclamation district and said respective counties are hereby made liable for such expenses. The individual expenses of the state director of conservation and development or his representatives shall be borne by the state. [1933 c 149 § 7; 1927 c 254 § 24; RRS § 7402-24. Formerly RCW 89.20.720.]

89.30.073 Hearing on petition—Place. The hearing on said petition shall be held at the office of the county board of the county where the petition is filed or at such other convenient place as said county board shall designate. [1927 c 254 § 25; RRS § 7402-25. Formerly RCW 89.20.730.]

89.30.076 Hearing on petition—Proof of notice. At the time and place designated in said notice the commission shall meet to consider said petition. Said commission shall first determine whether notice of the hearing on said petition has been published in the manner and for the time required by this chapter and shall file the affidavits of the publishers as to the time of publication in their respective newspapers among the records of the hearing. [1927 c 254 § 26; RRS § 7402-26. Formerly RCW 89.20.750.]

89.30.079 Hearing on petition—Consideration of petition—Evidence. If it is determined that the notice of the hearing has been properly published, the commission shall proceed to consider the petition, and to receive any pertinent evidence that may be offered. [1927 c 254 § 27; RRS § 7402-27. Formerly RCW 89.20.760.]

89.30.082 Hearing on petition—Boundaries to be fixed. Said commission shall have full authority to increase or diminish and change the boundaries of the proposed district and to fix the same so as to subserve the best interests of the district and to enable it to carry out the objects of its creation, and shall establish and define said boundaries. [1927 c 254 § 28; RRS § 7402-28. Formerly RCW 89.20.780.]

89.30.085 Hearing on petition—Name—Election to be ordered. At said hearing the commission shall give the district a name, shall fix a day for and order an

election to be held therein for the purpose of determining whether or not the district shall be created under the provisions of this chapter. [1927 c 254 § 29; RRS § 7402-29. Formerly RCW 89.20.790.]

89.30.088 Order for election to county auditors. The clerk of the commission shall forthwith mail by registered mail a copy of said order for an election to the county auditors of each of the counties in which any lands within the boundaries of the proposed reclamation district are located. [1927 c 254 § 30; RRS § 7402-30. Formerly RCW 89.20.870.]

89.30.091 Records of commission to be preserved. Upon full determination of the petition and the ordering of said election, the commission shall turn all papers and records involved in its deliberations over to the board of the county where the petition to organize the reclamation district was filed, and said papers and records shall be preserved among the records of said county board. [1927 c 254 § 31; RRS § 7402-31. Formerly RCW 89.20.800.]

89.30.094 Election—How conducted—Qualifications of electors. Notice of said election shall be given by the same officer in the same manner and for the same length of time, electors shall have the same qualifications, and said election shall be provided for, held and conducted by the same officers and the results thereof determined by the same officers in the same manner, and with the same force and effect as nearly as may be as that provided in this chapter for general reclamation district elections. [1927 c 254 § 32; RRS § 7402-32. Formerly RCW 89.20.890.]

89.30.097 Election—Notice, contents—Ballots. The notice of said election shall specify the boundaries of the proposed district as established by the commission and shall state that the object of said election is to determine whether or not said district shall be created under the provisions of this chapter, shall state that votes will be received at the regular polling places of the county precincts, except in the following new precincts for such election, (new precincts and voting places for the same shall be specified) and shall state that the polls will be open from eight o'clock a.m. to eight o'clock p.m. on said election day. The ballot for said election shall contain the words: Reclamation district—"Yes", and Reclamation district—"No". [1927 c 254 § 33; RRS § 7402-33. Formerly RCW 89.20.880.]

89.30.100 Election—Canvass of returns. The board of county commissioners of the county in which the petition to organize the district is filed shall receive from the several county auditors concerned their abstracts of election returns, herein provided for, shall tabulate the same and declare the result of the election. [1927 c 254 § 34; RRS § 7402-34. Formerly RCW 89.20.900.]

89.30.103 Order organizing district. If upon the tabulation of said abstracts of the returns of said election as

herein provided, it appears that a majority of the votes cast at said election were in favor of the creation of the district, the said county board shall by order entered in the minutes of its proceedings declare the territory included within the boundaries defined in the notice of election duly organized into a reclamation district within the provisions of this chapter, under the name and style theretofore designated and thereafter no other reclamation district including any of the same territory shall be organized under the provisions of this chapter. [1927 c 254 § 35; RRS § 7402-35. Formerly RCW 89.20.910.]

89.30.106 Order organizing district—Copy to be filed with county commissioners of other counties. Said county board shall then cause a copy of such order, duly certified by the clerk of the board to be immediately filed for record in the office of the county commissioners of any other county in which any portion of the territory embraced in such district is situated. [1927 c 254 § 36; RRS § 7402-36. Formerly RCW 89.20.920.]

89.30.109 Certified statement to be filed for record. It shall be the duty of the clerk of the board of county commissioners of every county in which any lands included in the district are situated forthwith to certify and file for record in the county auditor's office of his county, a statement to the effect that, under the provisions of this chapter, certain lands (describing them in township and range and in case of smaller bodies of land in legal subdivisions or fractions thereof) were, by order of the board of county commissioners of ----- county (naming the county) entered on the ----- day of ----- (naming the day, month and year) included in the ----- reclamation district (using the name designated in the order of the county board establishing the district). Said statement certified by the clerk of the county board shall be entitled to record in the office of the county auditor without payment of filing or recording fee. [1927 c 254 § 37; RRS § 7402-37. Formerly RCW 89.20.930.]

89.30.112 When creation complete—Proceedings conclusive, exception. From and after such filing the creation of the district shall be complete and its existence cannot thereafter be legally questioned by any person except the state of Washington in an appropriate court action brought within six months from the date of the order of the county board tabulating the abstracts of the returns of the organization election and creating said district. If the existence of said district is not challenged within the period above specified, the state of Washington shall thereafter be forever barred from questioning the legal existence of said district by reason of any defect in the organization thereof. [1927 c 254 § 38; RRS § 7402-38. Formerly RCW 89.20.940.]

89.30.115 District liable for formation costs. Any reclamation district created under the provisions of this chapter shall be liable for the necessary costs preliminary to and involved in preparing the petition for the organization of the district, in publishing any notice

required and in conducting the election approving the creation of the district. [1927 c 254 § 39; RRS § 7402-39. Formerly RCW 89.20.080.]

89.30.118 Change of name procedure—Effect. Any reclamation district created under the provisions of this chapter may change its corporate name by filing with the board of county commissioners of each of the counties in which any of the lands included within the operation of the district are situated a certified copy of a resolution of its board of directors adopted by a unanimous vote of all the members of said board at a regular meeting thereof providing for such change of name; and thereafter all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name. [1927 c 254 § 40; RRS § 7402-40. Formerly RCW 89.20.050.]

89.30.121 District is political subdivision. Reclamation districts created under this chapter shall be political subdivisions of the state and shall be held and construed to be municipal corporations within the provisions of the state Constitution relating to exemptions from taxation and within the provisions relating to the debt limits of municipal corporations: *Provided*, That nothing herein contained shall be construed as a limitation on general improvement and divisional districts, authorized herein, to contract obligations. [1967 c 164 § 10; 1927 c 254 § 41; RRS § 7402-41. Formerly RCW 89.20.070.]

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

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

89.30.124 Judgments against district—When chargeable against improvement and divisional districts. Any judgment obtained against the reclamation district on account of any contract or transaction, made for or on behalf of any general improvement district or divisional district herein authorized, or on account of the construction or maintenance of any improvement for such improvement district or divisional district, shall be chargeable exclusively against the improvement district or divisional district concerned and assessments may be levied against the lands therein to satisfy said judgment. [1927 c 254 § 42; RRS § 7402-42. Formerly RCW 89.24.250.]

89.30.127 District a corporate body—Powers. A reclamation district created under this chapter shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all powers that may now or hereafter be specifically conferred by law. [1927 c 254 § 43; RRS § 7402-43. Formerly RCW 89.20.300.]

89.30.130 Powers—In general. Said reclamation districts shall have full authority to carry out the objects

of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, to enter into and perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of taxes and special assessments in the manner herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this chapter. [1927 c 254 § 44; RRS § 7402-44. Formerly RCW 89.20.310.]

89.30.133 Powers—Improvement and divisional districts, purposes. Said reclamation districts shall have authority to create general improvement districts and divisional districts to include any or all the lands within the reclamation district, to provide for the levy and collection of special assessments against the respective lands benefited, and to issue bonds, and other evidences of indebtedness, as in this chapter provided. [1927 c 254 § 45; RRS § 7402-45. Formerly RCW 89.24.010.]

89.30.136 Powers—Development, sale, use, etc., of water or electric energy. Said reclamation districts shall have authority to develop and sell, lease or rent the use of water or electric energy for use or distribution within or without the district on such terms and under such regulations as may be determined by the district board or as shall be set out and prescribed in the contract between the district and the United States or the state of Washington for the construction of the district irrigation works, and to use the income derived therefrom for district purposes. [1933 c 149 § 8; 1927 c 254 § 46; RRS § 7402-46. Formerly RCW 89.20.330.]

89.30.139 Powers—Bonds payable from income. Said reclamation districts shall also have authority to issue and sell bonds of the district payable from the income derived from the sale or rental of water or electric power as in this chapter provided. [1927 c 254 § 47; RRS § 7402-47. Formerly RCW 89.26.240.]

89.30.142 Powers—Sale or lease of water—Drains—Land settlement. Said reclamation districts shall also have authority:

(1) To construct, repair, purchase, maintain, or lease a system or systems for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(2) To construct, repair, operate and maintain a system of drains as in this chapter provided.

(3) To regulate the settlement of lands within the district under the provisions of any contract with the state of Washington or the United States.

This section shall not be construed as in any manner affecting or abridging any other powers of said reclamation district conferred by law. [1927 c 254 § 48; RRS § 7402-48. Formerly RCW 89.20.320.]

89.30.145 Powers—Fiscal agent for United States. Reclamation districts created under this chapter may accept appointment as fiscal agent or other authority of the United States to make collections of money for or on behalf of the United States in connection with any federal or other reclamation project whereupon the reclamation district and the county treasurer for said district shall be authorized to act and to assume the duties and liabilities incident to such action and the district board shall have full power to do any and all things required by the said statute now or hereafter enacted in connection therewith and to do all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. [1927 c 254 § 49; RRS § 7402–49. Formerly RCW 89.20.340.]

89.30.148 Surety bond from contractor. Any person, firm or corporation except the state of Washington or the United States, to whom or to which a contract may have been awarded by the district for construction purposes, or for labor or material entered into when the total amount to be paid therefor exceeds one thousand dollars, shall enter into a surety bond to be approved by the district board, payable to the district for at least seventy-five percent of the contract price conditioned for the faithful performance of said contract and with such further conditions as may be required by law. [1927 c 254 § 50; RRS § 7402–50. Formerly RCW 89.24.510.]

89.30.151 Payments under contracts—Retained percentage. Contracts entered into by reclamation districts authorized under this chapter for construction or for services or materials, may provide that payments shall be made in such monthly amounts or in such monthly proportion of the contract price as the board shall determine as the work progresses or as the services or materials are furnished on monthly estimates of the value thereof approved by the board; *Provided*, That at least ten percent of each of the monthly estimates shall be retained until the contract is completed and its completion approved by the district board. [1927 c 254 § 51; RRS § 7402–51. Formerly RCW 89.24.520.]

89.30.154 Contracts—Public bidding—Notice. Contracts for labor or materials entering into the construction of any improvement authorized by the district shall be awarded at public bidding except as herein otherwise provided. A notice calling for sealed proposals shall be published in such newspaper or newspapers of such general circulation as the board shall designate for a period of not less than two weeks (three issues) prior to the date of the opening of the bids. Such proposals shall be accompanied by a certified check for such amount as the board shall decide upon to guarantee compliance with the bid, and shall be opened in public at the time and place designated in the notice. The contract shall be awarded to the lowest and best responsible bidder; *Provided*, That the board shall have authority to reject any and all bids. [1927 c 254 § 52; RRS § 7402–52. Formerly RCW 89.24.500.]

89.30.157 Contracts with United States or any state for construction, etc. The board shall have authority to enter into any obligation or contract authorized by law with the United States or with any state therein for the supervision of the construction, for the construction, reconstruction, betterment, extension, sale or purchase, or operation or maintenance of the necessary works for the delivery and distribution of water therefrom or for any other service furthering the objects for which said reclamation district is created under the provisions of the law of the state of Washington or of the United States and all amendments or extensions thereof and the rules and regulations established thereunder. [1927 c 254 § 53; RRS § 7402–53. Formerly RCW 89.24.530.]

89.30.160 Contracts with United States or state of Washington—Assumption of control or management. Reclamation districts created under this chapter shall have authority to enter into contracts with the state of Washington or the United States under any act of congress for the assumption of the control and management of the works for such period as may be designated in the contract. [1933 c 149 § 9; 1927 c 254 § 54; RRS § 7402–54. Formerly RCW 89.24.540.]

89.30.163 Contracts with United States or state of Washington—Bonds as payment or security—Levy for interest or payment. In case a contract has been or shall be hereafter made between the district and the state of Washington and/or the United States as herein provided, bonds of any general improvement district or of any divisional district herein authorized, may be deposited with the state of Washington and/or the United States as payment or as security for future payment at not less than ninety percent of the par value, the interest on said bonds to be provided for by assessment and levy as in the case of bonds of the district sold to private persons and regularly paid to the state of Washington and/or the United States to be applied as provided in such contract and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment against the lands of any general improvement district or of any divisional district concerned, an amount sufficient to meet each year all payments accruing under the terms of any such contract. [1933 c 149 § 10; 1927 c 254 § 55; RRS § 7402–55. Formerly RCW 89.24.550.]

89.30.166 Contracts with United States or state of Washington—Submission of contracts to electors. No contract, however, providing for the levy of such assessments shall be entered into with the state of Washington or the United States as above provided unless a proposition of entering into such a contract shall have first been submitted to the electors of the general improvement district or divisional district concerned, and by said electors approved. [1927 c 254 § 56; RRS § 7402–56. Formerly RCW 89.24.560.]

89.30.169 Contracts with United States or state of Washington—Election procedure. Elections held for

the purpose of approving a contract with the state of Washington or the United States as herein provided, shall be called, noticed, conducted and canvassed in the same manner and with the same force and effect as in the case of bond elections held in general improvement districts or in divisional districts as authorized in this chapter. [1927 c 254 § 57; RRS § 7402-57. Formerly RCW 89.24.570.]

89.30.172 Contracts with United States or state of Washington—Liability of district for improvement and divisional district obligations. The reclamation district shall not be liable under any contract creating an obligation chargeable against the lands of any general improvement district or of any divisional district authorized herein unless such liability is specifically stated in such contract. [1927 c 254 § 58; RRS § 7402-58. Formerly RCW 89.24.580.]

89.30.175 Drainage system—Authorization—Notice—Hearing. Whenever in the judgment of the reclamation district board a system of drainage for any lands included in the operation of any general improvement or divisional district therein will be of special benefit to the lands of the general improvement or divisional district as a whole, it shall pass a resolution to that effect and call a further meeting of the board to determine the question. Notice of said meeting shall be given by the secretary for the same length of time and in the same manner as required by law for the meeting of the commission to hear the petition for the organization of the reclamation district. At the time and place mentioned in the notice the board shall meet, hear such evidence as shall be presented, and fully determine the matter by resolution, which said resolution shall be final and conclusive upon all persons as to the benefit of said system of drainage to the lands in the district. [1927 c 254 § 59; RRS § 7402-59. Formerly RCW 89.24.020.]

89.30.178 Drainage system—Powers. Upon the passing of said resolution, the district shall in all respects have the same power and authority as is now or may hereafter be conferred respecting irrigation, and all powers in this chapter conferred upon the reclamation district with respect to irrigation shall be construed to include drainage in conjunction therewith as herein provided. [1927 c 254 § 60; RRS § 7402-60. Formerly RCW 89.24.030.]

89.30.181 Drainage system—Benefit to public road or city sewer system—Assessment. Whenever any drainage improvement constructed under the provisions of this chapter results in benefit to the whole or any part of a public road, road bed or track thereof, or will facilitate the construction or maintenance of any sewer system in any city or town, the state, county, city, town or subdivision or any of them responsible for the maintenance of said public road, or sewer, shall be liable for assessment for the cost and maintenance of such drainage improvement. [1927 c 254 § 61; RRS § 7402-61. Formerly RCW 89.24.040.]

89.30.184 Eminent domain—Authorized. The taking and damaging of property or rights therein or thereto by a reclamation district to construct an improvement or to fully carry out the purposes of its organization are hereby declared to be for a public use, and any district organized under the provisions of this chapter, shall have and exercise the power of eminent domain to acquire any property or rights therein or thereto either inside or outside the operation of the district and outside the state of Washington if necessary, for the use of the district. [1927 c 254 § 62; RRS § 7402-62. Formerly RCW 89.22.800.]

89.30.187 Eminent domain—Procedure. Reclamation districts exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of rights therein or thereto, by private corporations, except as otherwise expressly provided herein. [1927 c 254 § 63; RRS § 7402-63. Formerly RCW 89.22.810.]

89.30.190 Eminent domain—Joinder, consolidation of actions—Separate verdicts. The district may at its option unite in a single action proceedings to condemn, for its use, property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, be consolidated upon motion of any interested party, into a single action. In such cases, the jury shall render separate verdicts for the different tracts of land. [1927 c 254 § 64; RRS § 7402-64. Formerly RCW 89.22.820.]

89.30.193 Eminent domain—Damages and benefits—Judgment when damages exceed benefits, costs. The jury, or the court if the jury be waived, in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: *Provided*, That the court or jury, in determining the amount of damages, shall take into consideration the special benefits, if any, that will accrue to the property damaged by reason of the improvement for which the land is sought to be condemned, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of special benefits that will accrue. If it shall appear by the verdict or findings, that the gross damages exceed said gross special benefits, judgment shall be entered against the district, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over said special benefits, and for the costs of the proceedings, and upon payment of the judgment to the clerk of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the district. [1927 c 254 § 65; RRS § 7402-65. Formerly RCW 89.22.830.]

89.30.196 Eminent domain—Damages and benefits—Judgment for costs when benefits equal or exceed damages. If it shall appear by the verdict that the gross special benefits equal or exceed the gross damages,

judgment shall be entered against the district and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property in the district. [1927 c 254 § 66; RRS § 7402-66. Formerly RCW 89.22.840.]

89.30.199 Eminent domain—Levy on uncondemned lands unaffected. If the damages found in any condemnation proceedings are to be paid for from funds of the reclamation district, no finding of the jury or court as to benefits or damages shall in any manner abridge the right of the district to levy and collect taxes for district purposes against the uncondemned lands situated within the reclamation district. [1927 c 254 § 67; RRS § 7402-67. Formerly RCW 89.22.850.]

89.30.202 Eminent domain—Verdict and findings binding as to levy. If the damages found in any condemnation proceedings are to be paid for from special assessments levied in behalf of any general improvement or divisional district, the verdict and findings of the court or jury as to damages and benefits shall be binding upon the board of directors of the district in their levy of assessments to pay the cost of the system or improvements on behalf of which the condemnation was had, as herein provided. [1927 c 254 § 68; RRS § 7402-68. Formerly RCW 89.22.860.]

89.30.205 Eminent domain—Damages applied pro tanto to satisfy levies. The damages thus allowed but not paid shall be applied pro tanto to the satisfaction of the levies made for such construction costs upon the lands on account of which the damages were awarded: *Provided*, That nothing herein contained shall be construed to prevent the district from assessing the remaining lands of the owner or owners, so damaged, for deficiencies on account of the principal and interest on bonds and for other benefits not considered by the jury in the condemnation proceedings. [1927 c 254 § 69; RRS § 7402-69. Formerly RCW 89.22.870.]

89.30.208 Eminent domain—Title acquired. The title acquired by the reclamation district in condemnation proceedings shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation and in case such proceedings are brought in behalf of any general improvement or divisional district, the reclamation district shall hold title to lands so acquired as trustee for said general improvement or divisional district as the case may be. [1927 c 254 § 70; RRS § 7402-70. Formerly RCW 89.22.880.]

89.30.211 Right of entry to make surveys, etc. The reclamation district board and its agents and employees shall have the right to enter upon any land, to make surveys and may locate the necessary irrigation works and the line for canal or canals and the necessary branches for the same or for necessary transmission

power lines on any lands which may be deemed necessary for such location. [1933 c 149 § 11; 1927 c 254 § 71; RRS § 7402-71. Formerly RCW 89.20.350.]

89.30.214 Right to construct across streams, highways, railways, etc.—Duty to restore. The board of directors of any reclamation district authorized under this chapter, shall have power to construct district works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume which works may intersect or cross in such manner as to afford security for life and property, but said board shall restore the same when so crossed or intersected to its former state as near as may be or in a sufficient manner not to have impaired unnecessarily its usefulness. [1933 c 149 § 12; 1929 c 254 § 72; RRS § 7402-72. Formerly RCW 89.20.360.]

89.30.217 Right to construct across streams, highways, railways, etc.—Railroads to cooperate. Every company whose railroad shall be intersected or crossed by district works shall unite with said board in forming said intersections and crossings and shall grant the privileges aforesaid. [1927 c 254 § 73; RRS § 7402-73. Formerly RCW 89.20.370.]

89.30.220 Right to construct across streams, highways, railways, etc.—Disagreements, how determined. If such railroad company and said board or the owners or controllers of said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor or the points or manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided for the taking of land under the power of eminent domain. [1927 c 254 § 74; RRS § 7402-74. Formerly RCW 89.20.380.]

89.30.223 Right-of-way on state lands. The right-of-way is hereby given, dedicated and set apart to locate construction and maintenance works over and through any of the lands which are now or may be the property of the state of Washington. [1927 c 254 § 75; RRS § 7402-75. Formerly RCW 89.20.390.]

89.30.226 Board of directors—Composition. The affairs of the district shall be managed by a board of directors composed of a number of qualified resident electors of the district equal to the number of director districts contained in said reclamation district. [1927 c 254 § 76; RRS § 7402-76. Formerly RCW 89.22.020, part.]

89.30.229 Board of directors—Term of office. Except as herein otherwise provided, the term of the office of director shall be six years from and after the second Monday in January next succeeding his election. [1927 c 254 § 77; RRS § 7402-77. Formerly RCW 89.22.050, part.]

89.30.232 Director districts. The county board at the time of making the order creating a reclamation district

under the provisions of this chapter, shall divide the territory of the reclamation district into regional divisions to be known as "director districts". [1927 c 254 § 78; RRS § 7402-78. Formerly RCW 89.22.010, part.]

89.30.235 Director districts—Geographical boundaries—Designation. All the territory of each county included within the boundaries of the reclamation district shall constitute a director district which shall be designated by the name of the county in which it is located. [1927 c 254 § 79; RRS § 7402-79. Formerly RCW 89.22.010, part.]

89.30.238 First board—Appointment. The county board of the county in which each director district is located shall within ten days after receipt of the order creating the reclamation district appoint and certify to the county board of the county in which the reclamation district was affected, the appointment of a resident director from said director district to act as a member of the first board of directors of said reclamation district. [1927 c 254 § 80; RRS § 7402-80. Formerly RCW 89.22.030, part.]

89.30.241 First board—Term. The first members of the district board so appointed shall hold office until their successors have been elected at the time of the next general state and county election, and have been qualified. [1927 c 254 § 81; RRS § 7402-81. Formerly RCW 89.22.030, part.]

89.30.244 First directors—Election. At the time of the next general state and county election, an election shall be held in each of the director districts in the reclamation district for the purpose of electing directors of the district. [1927 c 254 § 82; RRS § 7402-82. Formerly RCW 89.22.600.]

89.30.247 First directors—Nominations. Candidates for the office of district director shall be nominated in the manner herein provided for such nominations. [1927 c 254 § 83; RRS § 7402-83.]

89.30.250 First directors—Terms. The terms of the first directors of the district to be elected shall be determined in relation to the amount of the taxable wealth in their respective director districts. The candidates of the wealthiest one-third of the total number of director districts shall serve for a term of six years; the candidates of the next wealthiest one-third of the total number of director districts shall serve for a term of four years; the candidates of the next wealthiest one-third or lesser number of the total number of director districts shall serve for a term of two years. [1933 c 149 § 13; 1927 c 254 § 84; RRS § 7402-84. Formerly RCW 89.22.040.]

89.30.253 Directors—Term. After the first terms have been served, all directors shall serve for a term of six years. [1927 c 254 § 85; RRS § 7402-85. Formerly RCW 89.22.050, part.]

89.30.256 Directors—Vacancies. In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment of a resident elector of the director district represented by the former incumbent by the board of directors of the reclamation district, and the person so appointed shall serve until the time of the next general state and county election when the vacancy shall be filled for the remainder of the unexpired term by an election in the director district concerned. [1927 c 254 § 86; RRS § 7402-86. Formerly RCW 89.22.070.]

89.30.259 Directors—Oath—Bond. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office and shall execute an official bond to the district in the sum of twenty-five hundred dollars conditioned for the faithful discharge of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was effected, and said oath and bond shall be recorded in the office of the clerk of the superior court and filed with the secretary of the district. [1927 c 254 § 87; RRS § 7402-87. Formerly RCW 89.22.060.]

89.30.262 Secretary's oath and bond. The secretary of the district shall take and subscribe a written oath of office and execute an official bond in the sum of not less than twenty-five hundred dollars to be fixed by the board of directors, and said bond shall be approved and filed as in the case of the bond of a director. [1927 c 254 § 88; RRS § 7402-88. Formerly RCW 89.22.290.]

89.30.265 Additional official bonds when fiscal agent of United States. In case any district authorized in this chapter is appointed fiscal agent of the United States or is authorized by the United States in connection with any irrigation project in which the United States is interested to make collections of money for or on behalf of the United States, such secretary and each such director and the county treasurer of the county where the organization of the district was effected shall each execute a further additional official bond in such sum respectively as the secretary of the interior may require conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States in such appointment or authorization; such additional bonds to be approved, recorded, filed and paid for as herein provided for other official bonds. [1927 c 254 § 89; RRS § 7402-89. Formerly RCW 89.22.300.]

89.30.268 Additional official bonds when fiscal agent of United States—Suit on. Any such additional bonds required by the secretary of interior as above provided may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties. [1927 c 254 § 90; RRS § 7402-90. Formerly RCW 89.22.310.]

89.30.271 Official bonds, cost of. All official bonds executed by district officers under the provisions of this chapter shall be secured at the cost of the district. [1927 c 254 § 91; RRS § 7402-91. Formerly RCW 89.22.320.]

89.30.274 Directors—Organization—President, secretary. The directors of the reclamation district shall organize as a board and shall elect a president from their number and appoint a secretary who shall be secretary of the district and who shall keep a record of the proceedings of the board and shall have custody of the official records of the district. [1927 c 254 § 92; RRS § 7402-92. Formerly RCW 89.22.080 and 89.22.280.]

89.30.277 District office. The office of the directors and principal place of business of the reclamation district shall be some place in the reclamation district to be designated by the directors. [1927 c 254 § 93; RRS § 7402-93. Formerly RCW 89.22.090.]

89.30.280 District office—Change of location. Said office and official place of business may be changed by passing a resolution to that effect at a previous meeting of the board entered in the minutes thereof and by posting a notice of the same in a conspicuous public place at or near the place of business which is to be changed at least ten days prior thereto, and by the previous posting of a copy of said notice for the same length of time at or near the new location of the office. [1927 c 254 § 94; RRS § 7402-94. Formerly RCW 89.22.100.]

89.30.283 Directors—Regular meetings, change of day. The directors shall hold a regular monthly meeting at their office on such day in each month as the board shall designate in their bylaws and may adjourn any meeting from time to time as may be required for the proper transaction of business; *Provided*, That the day of the regular monthly meeting cannot be changed except in the manner prescribed herein for changing the place of business of the district. [1927 c 254 § 95; RRS 7402-95. Formerly RCW 89.22.110.]

89.30.286 Directors—Special meetings—Notice—Business permissible. Special meetings of the board may be called at any time by order of a majority of the directors. Any member not joining in said order shall be given at least a three days' notice of such meeting, unless the same is waived in writing, which notice shall also specify the business to be transacted and the board at such special meetings shall have no authority to transact any business other than that specified in the notice, unless the transaction of any other business is agreed to in writing by all the members of the board. [1927 c 254 § 96; RRS § 7402-96. Formerly RCW 89.22.120.]

89.30.289 Directors—Meetings and records public. All meetings of the board of directors shall be public. All records of the board shall be open for the inspection of any elector of the district during business hours of the

day in which any meeting of the board is held. [1927 c 254 § 97; RRS § 7402-97. Formerly RCW 89.22.130.]

Meetings, minutes of governmental bodies: Chapter 42.32 RCW.

89.30.292 Directors—Quorum—Action by majority. A majority of the directors shall constitute a quorum for the transaction of business and in all matters requiring action by the board, there shall be a concurrence of at least a majority of the directors. [1927 c 254 § 98; RRS § 7402-98. Formerly RCW 89.22.180, part.]

89.30.295 Directors—Seal, bylaws, rules. The board shall have the power and it shall be its duty to adopt a seal of the reclamation district and to establish equitable bylaws, rules and regulations for the government and management of the affairs of the district. The bylaws, rules and regulations must be printed in convenient form for distribution in the district. [1927 c 254 § 99; RRS § 7402-99. Formerly RCW 89.22.180, part.]

89.30.298 Compensation of directors, officers, employees. The members of the board of directors shall each receive not to exceed five dollars per day in attending the meetings, to be determined by said board, and such compensation, not exceeding five dollars per day, for other services rendered the district as shall be fixed by resolution adopted by vote of the directors and entered in the minutes of their proceedings, and in addition thereto, said directors shall receive necessary expenses in attending meetings or when otherwise engaged in district business. The board shall fix the compensation to be paid to the secretary and all other officers, agents and employees of the district. [1927 c 254 § 100; RRS § 7402-100. Formerly RCW 89.22.140.]

89.30.301 Interest in contracts prohibited—Penalty. No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: *Provided*, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as a day laborer. [1927 c 254 § 101; RRS § 7402-101. Formerly RCW 89.22.150.]

89.30.304 Delivery of records, etc., to successor. Every person, upon the expiration or sooner termination of his term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his successor in office, all records, books, papers and other property under his control and belonging to such office. In case of the death of any officer, his legal representative shall turn over and deliver such records, books, papers and other property to the successor in office of such

deceased person. [1927 c 254 § 102; RRS § 7402-102. Formerly RCW 89.22.160.]

89.30.307 Employees on termination to deliver records to board—Penalty. Every person hired by the district and having in his custody or under his control, in connection with his contract of hire, any records, books, papers or other property belonging to the district shall immediately upon the expiration of his services, turn over and deliver, under oath, to the district board or any member thereof, all such records, books, papers or other property. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [1927 c 254 § 103; RRS § 7402-103. Formerly RCW 89.22.170.]

89.30.310 County treasurer is ex officio district treasurer. The county treasurer of the county in which the organization of the reclamation district was effected shall be and is hereby constituted ex officio district treasurer of said district and of any general improvement district or divisional district organized therein. [1927 c 254 § 104; RRS § 7402-104. Formerly RCW 89.22.400.]

89.30.313 Liability of county treasurers. Any county treasurer collecting or handling funds of the district shall be liable upon his official bond and to criminal prosecution for malfeasance, misfeasance or nonfeasance in office relative to any of his duties prescribed herein. [1927 c 254 § 105; RRS § 7402-105. Formerly RCW 89.22.470.]

89.30.316 County treasurers to collect assessments. It shall be the duty of the county treasurer of each county in which lands of the district are located to collect and receipt for all assessments and taxes levied as in this chapter provided, and he shall account to the district for all interest received on such funds from any public depository with which the same may be deposited. [1927 c 254 § 106; RRS § 7402-106. Formerly RCW 89.22.420.]

89.30.319 Funds to be deposited with county treasurer. There shall be deposited with the county treasurer of the county in which the organization of the reclamation district was effected, all sums collected for and on account of taxes levied by the reclamation district, also all sums collected by tolls, regular annual assessments or voted special assessments, all proceeds from bond sales and all other funds belonging to the reclamation district or collected in behalf of any general improvement district or divisional district within the reclamation district, and all said funds shall be placed by the county treasurer in the appropriate fund of the district. [1927 c 254 § 107; RRS § 7402-107. Formerly RCW 89.22.410.]

89.30.322 Claims against district. Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance the claim shall be attached to a voucher verified by the claimant or his agent and approved by the president and countersigned

by the secretary and directed to the county auditor of the county in which the organization of the reclamation district was effected, for the issuance of a warrant against the proper fund of the district in payment of said claim. [1927 c 254 § 108; RRS § 7402-108. Formerly RCW 89.20.060.]

89.30.325 Disbursement of funds by county treasurer. Said county treasurer shall pay out the moneys received or deposited with him or any portion thereof upon warrants issued by the county auditor against the proper funds of the district except the sums to be paid out of the bond fund for principal and interest payments on bonds. [1983 c 167 § 249; 1927 c 254 § 109; RRS § 7402-109. Formerly RCW 89.22.450.]

Liberal construction—Severability—1983 c 167: See RCW 39-.46.010 and note following.

89.30.328 Treasurer's monthly report. The said treasurer shall report in writing during the first week in each month to the board of directors of the district the amount of money held by him, the amount in each fund, the amount of receipts for the month preceding in each fund and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the district. [1927 c 254 § 110; RRS § 7402-110. Formerly RCW 89.22.440.]

89.30.331 Secretary's monthly report of expenditures. The secretary shall also report to the board in writing during the first week in each month, the amount and items of expenditures during the preceding month and said report shall be filed in the office of the board. [1927 c 254 § 111; RRS § 7402-111. Formerly RCW 89.22.330.]

89.30.334 Elections—When general held. General elections may be held in the reclamation district at the same time that general state and county elections are held to determine any proposition that may be legally submitted to the electors. [1927 c 254 § 112; RRS § 7402-112. Formerly RCW 89.22.570.]

89.30.337 Elections—When special held. Special elections may be held at any time upon resolution of the district board. [1927 c 254 § 113; RRS § 7402-113. Formerly RCW 89.22.580.]

89.30.340 Elections—How noticed and conducted. Notice of any general or special reclamation district election held under the provisions of this chapter shall be given by the same officials in the same manner and for the same length of time, and said election shall be provided for, held and conducted by the same officials and the results thereof determined by the same officials in the same manner and with the same force and effect as nearly as may be as that provided by the general laws of the state of Washington relating to state and county elections. [1927 c 254 § 114; RRS § 7402-114. Formerly RCW 89.22.590.]

89.30.343 Elections—Voting precincts. All county voting precincts lying wholly within the reclamation district shall also constitute the voting precincts of such district. In any instance where the county voting precinct lies only partly within the district, that part of the county voting precinct lying within the reclamation district shall constitute the voting precinct of such district. [1927 c 254 § 115; RRS § 7402–115. Formerly RCW 89.22.660.]

89.30.346 Elections—Polling places. The polling places for the county voting precincts shall also be the polling places for all voting precincts of the reclamation district, which coincide with or are a part of said county voting precincts. [1927 c 254 § 116; RRS § 7402–116. Formerly RCW 89.22.670.]

89.30.349 Elections—Polls outside district precinct. No reclamation district election, otherwise regular, shall be invalid by reason of the fact that some of the polling places for said election were located outside the district voting precinct. [1927 c 254 § 117; RRS § 7402–117. Formerly RCW 89.22.680.]

89.30.352 Elections—List of registered voters. The registration clerk of any county voting precinct, partially included in a reclamation district voting precinct, is hereby authorized and it shall be his duty to prepare and certify at the expense of the district a poll list of all registered voters of said reclamation district voting precinct and to attach the same to the poll books for his county voting precinct. [1927 c 254 § 118; RRS § 7402–118. Formerly RCW 89.22.690.]

89.30.355 Elections—Certification of propositions. At least thirty days prior to any general district election, the secretary of the reclamation district shall certify to the county auditor of each county in which the election is to be held, any proposition to be voted on in such precincts. [1927 c 254 § 119; RRS § 7402–119. Formerly RCW 89.22.710.]

89.30.358 Elections—Ballots to be separate. The reclamation district ballot for any district election shall be separate from that for any other election held at the same time and place and shall be printed by the county auditor of each county concerned. [1927 c 254 § 120; RRS § 7402–120. Formerly RCW 89.22.720.]

89.30.361 Elections—Checking names of voters against registration list. In any case where the reclamation district voting precinct includes only part of the county voting precinct, the precinct election officials for said precinct shall check the names of the electors offering to vote the district election against the registered poll list attached to the registration book, and any said elector whose name appears on said poll list shall receive a district ballot and shall be entitled to vote at said district election. [1927 c 254 § 121; RRS § 7402–121. Formerly RCW 89.22.700.]

89.30.364 Elections—Returns—Canvassing boards. Precinct election officials shall make return of reclamation district elections to their respective county canvassing boards, which boards are hereby constituted canvassing boards for all district voting precincts in their respective counties. [1927 c 254 § 122; RRS § 7402–122. Formerly RCW 89.22.730.]

89.30.367 Elections—Abstract of result. Immediately upon conclusion of the canvass of the returns of the reclamation district election held in the precincts located in his county, the county auditor shall mail to the chairman of said district board, an abstract of the result of said district election in his county. [1927 c 254 § 123; RRS § 7402–123. Formerly RCW 89.22.740, part.]

89.30.370 Elections—District board to tabulate abstracts and declare result. Upon receipt of all the required abstracts of any said reclamation district election, the district board shall meet and tabulate the same, and by resolution declare the result of the district election. [1927 c 254 § 124; RRS § 7402–124. Formerly RCW 89.22.740, part.]

89.30.373 Director district to be represented on board. Each director district shall be entitled to representation on the reclamation district board. [1927 c 254 § 125; RRS § 7402–125. Formerly RCW 89.22.020, part.]

89.30.376 Election of subsequent directors. At the time of the general state and county election next prior to the expiration of the term of office of any director representing a director district on the reclamation district board, a candidate for such position shall be elected from such director district by the electors of such district. [1927 c 254 § 126; RRS § 7402–126. Formerly RCW 89.22.610.]

89.30.379 Director district elections. Director district elections shall be provided for, noticed, conducted, canvassed and abstracts of the returns mailed to the reclamation district board, by the same respective officials and in the same manner substantially, the voters thereat shall have the same qualifications and shall vote at the same respective polling places, as that provided herein for general reclamation district elections held in said director districts. [1927 c 254 § 127; RRS § 7402–127. Formerly RCW 89.22.640.]

89.30.382 Declaration of candidacy for board—Fee. Any qualified resident elector of any director district which is entitled at that time to elect a candidate for the office of reclamation district director may become a candidate for such office by filing, at least thirty days prior to the election, his declaration of candidacy with the county auditor of his county and by paying a fee of one dollar for said filing. [1927 c 254 § 128; RRS § 7402–128. Formerly RCW 89.22.620.]

89.30.385 Ballots for director. The ballots for the election of any reclamation district director shall contain

the names of all candidates for such office, who have filed and paid the fee for their respective declarations as aforesaid. [1927 c 254 § 129; RRS § 7402-129. Formerly RCW 89.22.630.]

89.30.388 District elections—Primary law not to apply. The provisions of the law of the state relating to primary elections shall not apply to district elections authorized in this chapter. [1927 c 254 § 130; RRS § 7402-130.]

89.30.391 Annual tax—Authorization. For the purpose of raising revenue for any of the purposes of the reclamation district, an annual tax shall be levied on all the taxable real and personal property within the district: *Provided*, That no such tax shall be levied without the approval of the electors of said district at a general election, or at a special election called for that purpose. [1933 c 149 § 14; 1927 c 254 § 131; RRS § 7402-131. Formerly RCW 89.26.010.]

89.30.394 Annual tax—How equalized and levied. Said taxes shall be assessed by the county assessors of each county in which any land within the reclamation district is situated, the valuations of the property assessed shall be equalized by the board of equalization of each said respective county, and the levy made on estimates furnished by the district board, by the board of county commissioners of each said respective county, at the same time general state and county taxes are assessed, property values equalized and taxes levied respectively. [1927 c 254 § 132; RRS § 7402-132. Formerly RCW 89.26.020.]

89.30.397 Annual tax—How collected. Taxes so levied shall become a part of the general tax roll of the county and shall be collected and the property charged therewith sold in the same manner, at the same time, with the same penalties attached in case of delinquency, as the general state and county tax, and the proceeds thereof credited to the reclamation district in the office of the county treasurer of the county in which the organization of the reclamation district was effected, as herein provided. [1927 c 254 § 133; RRS § 7402-133. Formerly RCW 89.26.030.]

89.30.400 Debt limit—General. Reclamation districts created under the provisions of this chapter are hereby authorized and empowered to contract indebtedness for district purposes in any manner, when they deem it advisable, not exceeding an amount, together with the existing nonvoter approved indebtedness of such district, of three-fourths of one percent of the value of the taxable property in such district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1984 c 186 § 63; 1970 ex.s. c 42 § 38; 1927 c 254 § 134; RRS § 7402-134. Formerly RCW 89.26.060.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

89.30.403 Exceeding debt limit—Procedure. Such reclamation districts may contract indebtedness for strictly district purposes in excess of the amount specified in the preceding section, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters therein voting at an election held for that purpose assent thereto. Elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 64; 1970 ex.s. c 42 § 39; 1927 c 254 § 135; RRS § 7402-135. Formerly RCW 89.26.070.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

89.30.412 General obligation bonds—Authorized. The reclamation district board shall have authority to evidence district indebtedness by the issuance and sale of negotiable general obligation bonds of the district. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 65; 1983 c 167 § 250; 1927 c 254 § 138; RRS § 7402-138. Formerly RCW 89.26.200.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.427 Special fund from fixed income—Bonds payable from special fund—Contract to purchase or lease electricity—Powers of reclamation district conferred. (1) In any instance where the district, general improvement or divisional district is selling, renting or leasing water or electric energy under the provisions of this chapter and there is reasonable certainty of a permanent fixed income from this source, the district board shall have authority to create a special fund derived from a fixed proportion of the gross income thus obtained and to issue bonds of the district payable from such special fund and to sell the same to raise revenue for the payment or amortization of the cost of the construction and/or the operation and maintenance of the reclamation district or general improvement or divisional district works and for such other purposes as the state of Washington and/or the United States may require: *Provided*, That the state of Washington may, through the director of ecology, enter into a contract with the reclamation district, improvement or divisional district or districts or the United States to purchase, rent or lease and to sell or resell and/or distribute all or any part of the electric energy developed or to be developed at the reclamation, improvement or divisional district works at a price sufficient to amortize the cost of power development over a period of fifty years after the completion of such power development and to provide a surplus sufficient to reduce the cost of reclaiming the lands of the district or districts within economic limits: *And provided further*, That no contract or contracts as in this section provided shall be finally consummated or become binding in any way whatsoever until the legislature of the

state of Washington in special or regular session shall approve the same, and provided further in such sale and/or distribution of power by the director of ecology preference in the purchase and/or distribution thereof shall be given to municipal corporations and cooperative associations: *And provided further*, That general improvement and divisional districts shall have (in addition to the powers granted them in chapter 254 of the Session Laws of 1927 and in this act) the same powers as are given to the reclamation districts under RCW 89.30.007.

(2) Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 254; 1933 c 149 § 15; 1927 c 254 § 143; RRS § 7402-143. Formerly RCW 89.24.270, 89.24.590 and 89.26.250.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.430 Special fund from fixed income—Contents—Pledge of income—Not district obligation. Bonds payable from such special fund shall not be an obligation of the reclamation district and they shall state on their face that they are payable solely from a special fund derived from a certain fixed proportion (naming it) of the gross income derived by the district from the sale, rent or lease of water or power, as the case may be, and such fixed proportion of such gross income shall be irrevocably devoted to the payment of such bonds until the same are fully paid. [1927 c 254 § 144; RRS § 7402-144. Formerly RCW 89.26.260.]

89.30.433 Special fund from fixed income—Maturity—Form—Interest rates. Said bonds shall mature in series amortized in a definite schedule during a period not to exceed sixty years from the date of their issuance, shall be in such denominations and form including bearer bonds or registered bonds as provided in RCW 39.46.030, and shall be payable, with annual or semiannual interest at a rate or rates the board shall provide: *Provided*, That such bonds may also be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 255; 1981 c 156 § 33; 1933 c 149 § 16; 1927 c 254 § 145; RRS § 7402-145. Formerly RCW 89.26.270.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.436 General improvement districts—Authorized. In any instance where the construction, reconstruction, betterment or extension of power and/or irrigation works or the acquisition of property and rights therein appropriate for the purpose of carrying out the provisions of this chapter, will specially benefit any or all the lands within the reclamation district susceptible of irrigation, the district board shall have authority to organize said lands into a general improvement district and to provide for the levy and collection of special assessments against said lands to raise revenue in support of any or all of said purposes. [1933 c 149 § 17; 1927 c 254 § 146; RRS § 7402-146. Formerly RCW 89.24.050.]

89.30.439 General improvement districts—Resolution, survey and investigation. For the purpose of organizing such an improvement district, the district board shall pass a resolution outlining in general terms the proposed improvement to be constructed or property or rights to be acquired, finding that the same will be of special benefit to any or all the lands susceptible of irrigation within the reclamation district, and ordering a survey and investigation with respect to the matter. [1927 c 254 § 147; RRS § 7402-147. Formerly RCW 89.24.060.]

89.30.442 General improvement districts—Cost of survey and investigation—Limitation of levy. The cost of making said survey and investigation shall be paid from any funds available for the purpose in the treasury of the reclamation district; *Provided*, That the annual tax levy made by the reclamation district for such purpose shall not exceed one mill in any year. [1927 c 254 § 148; RRS § 7402-148. Formerly RCW 89.24.070.]

89.30.445 General improvement districts—Board may make survey and investigation. The district board shall have full authority to make such survey and investigation as in its judgment shall be necessary to obtain reliable information upon which to determine whether the proposed improvement shall be made or property or rights acquired, and for this purpose the district board shall employ such services of every nature as may be required. [1927 c 254 § 149; RRS § 7402-149. Formerly RCW 89.24.080.]

89.30.448 General improvement districts—Contract with state or United States for survey and investigation. The district board shall also have authority to enter into contracts with the proper department of the state of Washington or the federal government, to make such survey and investigation, or any part of same or to render any other service as may be deemed advisable. [1927 c 254 § 150; RRS § 7402-150. Formerly RCW 89.24.090.]

89.30.451 General improvement districts—Report on survey and investigation—Estimate of cost. Upon the completion of said survey and investigation, the district board shall cause to be filed in its office a written report of the same. Said report shall specify the character of the proposed improvement to be made, or property or rights to be acquired, shall state in reasonable detail the probable cost of same, including integral parts thereof: *Provided*, That such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in carrying out the proposed project. Said report shall also outline a plan for financing the proposed project, shall contain any recommendations that may be deemed advisable, and shall be identified by the signature of the secretary of the district as the official report of the survey and investigation in the proceedings to organize said improvement district. [1927 c 254 § 151; RRS § 7402-151. Formerly RCW 89.24.100.]

89.30.454 General improvement districts—Notice for hearing on report. The district board shall thereupon fix a time and place for a hearing on said report and shall cause notice of said hearing to be published in the same manner and for the same length of time as provided herein in case of notice of hearing on the petition to organize the reclamation district. [1927 c 254 § 152; RRS § 7402–152. Formerly RCW 89.24.110.]

89.30.457 General improvement districts—Contents of notice for hearing. Said notice shall state that all or part of the lands included in the reclamation district (naming it) are proposed to be organized as a general improvement district for the purpose of making a certain improvement (stating its nature generally) or acquiring certain property or rights (naming the same) as the case may be, that the lands within the proposed improvement district (where part only of the lands in the reclamation district are to be included, such part shall be described in township, ranges and where necessary in lesser legal subdivisions) are to be assessed to pay for said improvement, or property or rights therein; that a report containing further information concerning the matter is on file in the office of the board of the reclamation district and may be inspected at any time, during business hours, by any interested person; that a hearing thereon will be held (stating the time and place); that all persons interested may appear before the board at the time and place named in the notice and show cause, if any they have, why the proposed district should not be organized, the proposed project carried out, and said lands assessed for that purpose. Said notice shall be signed by the secretary of the reclamation district. [1927 c 254 § 153; RRS § 7402–153. Formerly RCW 89.24.120.]

89.30.460 General improvement districts—Hearing—Adjournments. On the date set for said hearing, the district board shall meet at the place designated in the notice, and if it appears that due notice of such hearing has been given, shall proceed with the hearing and may adjourn said hearing from time to time and place to place. [1927 c 254 § 154; RRS § 7402–154. Formerly RCW 89.24.130.]

89.30.463 General improvement districts—Objections and evidence at hearing. At said hearing, the district board shall hear all objections and receive all pertinent evidence offered and shall, in any event, receive evidence as to whether all the lands included in the proposed improvement district will be benefited by the proposed project. [1927 c 254 § 155; RRS § 7402–155. Formerly RCW 89.24.140.]

89.30.466 General improvement districts—Change of plans. The district board at said hearing may adopt, or for good reason, change, add to or modify the plans for the system of improvement, and shall exclude lands not benefited; said board shall have full authority to determine all the questions properly before it at said hearing. [1927 c 254 § 156; RRS § 7402–156. Formerly RCW 89.24.150.]

89.30.469 General improvement districts—Order on approval. If at said hearing the district board approves the plan of improvement or acquisition of property or rights therein, it shall make and enter an order to that effect, shall specify the lands that will be specially benefited by the proposed project and shall declare the improvement district duly organized under the name of general improvement district No. _____ of _____ reclamation district. [1927 c 254 § 157; RRS § 7402–157. Formerly RCW 89.24.160.]

89.30.472 General improvement districts—Findings conclusive, exception. The finding of the board that the lands included within the general improvement district will be benefited by the proposed improvement or acquisition of property or rights therein, shall be a legislative determination that such lands will be specially benefited to the extent necessary to pay in full all costs and obligations of every nature required in making and maintaining such improvement or for the acquisition of property or rights, and such determination shall be conclusive upon the courts, except for actual fraud or arbitrary action on the part of the district board when making such finding as to lands benefited. [1927 c 254 § 158; RRS § 7402–158. Formerly RCW 89.24.170.]

89.30.475 General improvement districts—Special benefits deemed continuing. The special benefits conferred upon the lands involved in the general improvement district by any such improvement or by the acquisition of any property or rights therein shall not be deemed to accrue at any one time but shall be deemed to be benefits continuing throughout the period of the life of the project, which render said lands subject to assessment, from year to year as herein provided, to pay for and carry out the object for which such improvement was made or property or rights therein acquired. [1927 c 254 § 159; RRS § 7402–159. Formerly RCW 89.24.180.]

89.30.478 General improvement districts—Powers of board—Act on behalf of improvement or divisional district not to render reclamation district liable. The board of directors of the reclamation district shall have full authority to manage and conduct the business affairs of the general improvement district, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, to establish reasonable bylaws, rules and regulations for the government and management of the affairs of the improvement district, and generally to perform any and all acts necessary to carry out the purpose of the general improvement district: *Provided*, That no act done nor contract entered into by the district board for or in behalf of any improvement district or in behalf of any divisional district herein authorized, shall in any manner bind the reclamation district or render the same liable except as herein specifically provided, but such act or contract shall be chargeable exclusively to the lands of the improvement district or divisional district concerned. [1927 c 254 § 160; RRS § 7402–160. Formerly RCW 89.24.190.]

89.30.481 Power of board as to assessments in improvement or divisional districts. Said district board shall have authority to levy assessments as herein provided against the benefited lands included within the operation of the general improvement or divisional district for any of the objects or purposes for which the general improvement or divisional district was organized. [1927 c 254 § 161; RRS § 7402-161. Formerly RCW 89.24.260.]

89.30.484 Divisional districts—Authorized. For the purpose of carrying out any of the objects for which a reclamation district may be created and maintained, under the provisions of this chapter in units of development of lesser area than that contemplated in the organization of a general improvement district, the district board shall have authority to organize the lands susceptible of irrigation in one or more of such units of development, into divisional districts. [1927 c 254 § 162; RRS § 7402-162. Formerly RCW 89.24.200.]

89.30.487 Divisional districts—Powers of board, officers and electors. All the powers which the district board, other officers and the electors therein, now or shall hereafter have under the provisions of this chapter to organize, manage, finance and operate a general improvement district, said board, other officers and said electors, shall have to organize, manage, finance and operate divisional districts, and such divisional districts may be organized, managed, financed and operated to develop and improve the lands susceptible of irrigation within their operation for any of the purposes for which a general improvement district may be organized, managed, financed and operated. [1927 c 254 § 163; RRS § 7402-163. Formerly RCW 89.24.210.]

89.30.490 Divisional districts—Organization. Divisional districts shall be organized in the same manner as that provided herein for the organization of general improvement districts. [1927 c 254 § 164; RRS § 7402-164. Formerly RCW 89.24.220.]

89.30.493 Divisional districts—Liability. Any assessments levied against the lands included in any said divisional district, any contracts entered into, any evidences of indebtedness issued, or obligations arising, in behalf of any said divisional district, shall be in addition to and independent of any assessments, contracts, evidences of indebtedness, or obligations arising in behalf of any general improvement district, authorized under the provisions of this chapter. [1927 c 254 § 165; RRS § 7402-165. Formerly RCW 89.24.230.]

89.30.496 Divisional districts—Assessments, contracts, etc. The district board and other proper officers shall have authority to levy and collect assessments against the lands included in any said divisional district, enter into contracts, issue evidences of indebtedness, and do everything that may be necessary to carry out the purposes of the divisional district organization, in similar form and manner as that provided in this chapter with

respect to general improvement districts. [1927 c 254 § 166; RRS § 7402-166. Formerly RCW 89.24.240.]

89.30.499 Exclusion of nonirrigable lands from general improvement or divisional districts—Petition—Prior obligations. In any instance in which any tract of land not susceptible of irrigation in its natural state has been included in any general improvement district or divisional district herein authorized through inadvertency or mistake on the part of the district board at the time of the organization of such general improvement district or divisional district, the same may be excluded from the district concerned by a petition made by the owner or owners thereof and filed with the district board: *Provided*, That the exclusion of said land or lands shall not relieve the same of its obligation to pay assessments for bonds outstanding at the time said petition is filed with the district board without written consent of the holders of said bonds. [1927 c 254 § 167; RRS § 7402-167. Formerly RCW 89.24.400.]

89.30.502 Exclusion of nonirrigable lands from general improvement or divisional districts—Time for hearing—Notice. Upon the receipt of any petition for exclusion of lands from any general improvement district or divisional district, the board shall fix a time and place for hearing said petition and give notice thereof at the expense of the landowner concerned by publication in a newspaper of general circulation published in the county where the lands petitioned to be excluded are situated, for a period of two weeks (three issues) prior to the date of the hearing. [1927 c 254 § 168; RRS § 7402-168. Formerly RCW 89.24.410.]

89.30.505 Exclusion of nonirrigable lands from general improvement or divisional districts—Hearing. At the time and place named in the notice, the board shall consider the petition and shall have full authority to grant or deny the same. [1927 c 254 § 169; RRS § 7402-169. Formerly RCW 89.24.420.]

89.30.508 Exclusion of nonirrigable lands from general improvement or divisional districts—Levy to pay bonds preserved. In the event that there are outstanding bonds, the board shall have authority, if it believes that the petition should otherwise be granted, to grant the same for all purposes except that of the levy of assessments to pay the principal and interest of outstanding bonds. [1927 c 254 § 170; RRS § 7402-170. Formerly RCW 89.24.430.]

89.30.511 Exclusion of nonirrigable lands from general improvement or divisional districts—Unconditional relief—Effect. In the event that a petition for exclusion as herein provided is unconditionally granted by the district board, said land shall thereafter be relieved from any obligation to pay special assessments levied in behalf of the district from which the same is excluded. [1927 c 254 § 171; RRS § 7402-171. Formerly RCW 89.24.440.]

89.30.514 Exclusion of nonirrigable lands from general improvement or divisional districts—Power to reduce assessments. In the event that lands petitioned to be excluded cannot be relieved of the obligation to pay assessments for outstanding bonds, the board shall have authority, when sitting as a board of equalization, to make an equitable reduction in the amount of assessments levied against such land for bond purposes. [1927 c 254 § 172; RRS § 7402-172. Formerly RCW 89.24.450.]

89.30.517 Negotiable bonds of general improvement or divisional district—Authorized. (1) For the purpose of furthering or carrying out any of the objects for which a general improvement or divisional district was organized, for the purpose of raising additional moneys for that purpose or for refunding outstanding improvement or divisional district bonds, the district board shall have authority to issue and sell negotiable bonds in such amounts as shall be approved by the electors of the general improvement or divisional district at an election called for that purpose, as herein provided.

(2) Notwithstanding the provisions of RCW 89.30.520 through 89.30.568, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 256; 1927 c 254 § 173; RRS § 7402-173. Formerly RCW 89.26.400.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.520 Negotiable bonds of general improvement or divisional district—Form, contents, payment, interest. (1) Bonds issued under the provisions of this chapter shall be negotiable, serial bonds, in such series, maturities and denominations as the board shall determine, payable in legal currency of the United States, at such place as the board shall provide, from funds derived from the levy and collection of special assessments against the benefited lands within the operation of the general improvement or divisional district and shall draw interest at a rate or rates as the board shall authorize. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 257; 1970 ex.s. c 56 § 103; 1969 ex.s. c 232 § 62; 1927 c 254 § 174; RRS § 7402-174. Formerly RCW 89.26.480.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

89.30.523 Negotiable bonds of general improvement or divisional district—Obligation of improvement and divisional district—Reclamation district not obligated—Deferred assessments. Such bonds shall not constitute an obligation of the reclamation district and shall so specify on their face, but said bonds shall constitute a general obligation of the general improvement

or divisional district for the benefit of which the same are issued and all the lands included in such general improvement or divisional district shall be and remain liable to be assessed for their payment until the principal and interest of said bonds are fully paid: *Provided*, That in case the plan of improvement contemplates the construction of units progressively, the levy and collection of assessments against lands in any undeveloped unit, may at the option of the district board be deferred until such lands are sufficiently developed to equitably bear such exactions. [1927 c 254 § 175; RRS § 7402-175. Formerly RCW 89.26.500.]

89.30.526 Negotiable bonds of general improvement or divisional district—Election, how conducted. Elections held in a general improvement or divisional district for the purpose of determining whether bonds of the district shall be issued, shall except as otherwise herein provided, be called by the district board, shall be provided for, noticed, conducted and the results thereof determined in the same manner and by the same officers respectively in each county concerned as nearly as may be as provided in the general election laws of the state for special municipal and district elections. [1927 c 254 § 176; RRS § 7402-176. Formerly RCW 89.26.410.]

89.30.529 Negotiable bonds of general improvement or divisional district—Election precincts and officials. The several county election boards of the respective counties concerned shall have full authority and it shall be their duty to establish election precincts within the general improvement or divisional district for such bond elections and to appoint the necessary election officials, and to do such other things as may be necessary and proper for the holding of such an election: *Provided*, That wherever possible the regular county voting precincts, polling places and election officials shall be used for said elections. [1927 c 254 § 177; RRS § 7402-177. Formerly RCW 89.26.420.]

89.30.532 Negotiable bonds of general improvement or divisional district—Contents of notice of election. Notice of said election shall state the amount and maturities of the proposed bonds and in general terms the objects for which said bonds are to be issued, shall specify any precincts and the location of any polling places other than the regular county precincts and polling places therein, shall state that the polling places will be open from eight o'clock a.m. to eight o'clock p.m. on the day of said election and shall be signed by the clerk of said respective county election boards. [1927 c 254 § 178; RRS § 7402-178. Formerly RCW 89.26.430.]

89.30.535 Negotiable bonds of general improvement or divisional district—Notice and election in nonassessable area. Where any nonassessable area is situated within any voting precinct within the general improvement or divisional district, any notice or other announcement required by law to be posted, may be so posted in such area, and any election held or to be held pursuant to the provisions of this chapter, may be held

within such area. [1927 c 254 § 179; RRS § 7402-179. Formerly RCW 89.26.440.]

89.30.538 Negotiable bonds of general improvement or divisional district—Mailing returns—Canvass. The election officials for every voting precinct for said bond elections shall mail their returns to the county election board of the county in which such precincts are located, and such board shall canvass the returns of said election. [1927 c 254 § 180; RRS § 7402-180. Formerly RCW 89.26.450.]

89.30.541 Negotiable bonds of general improvement or divisional district—Abstract of election results. Immediately upon the canvass of said election, the county auditors of the several counties concerned shall mail an abstract of the result of said election in the precincts of their respective counties to the board of directors of the reclamation district. [1927 c 254 § 181; RRS § 7402-181. Formerly RCW 89.26.460.]

89.30.544 Negotiable bonds of general improvement or divisional district—Resolution authorizing issuance of bonds. The reclamation district board shall tabulate said abstracts of election returns and if it appears that a majority of the votes cast at any such election are in favor of the proposition submitted at said election, the board shall so declare and enter a resolution authorizing the issuance of bonds in the amounts and maturities and for the objects proposed. Such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 258; 1927 c 254 § 182; RRS § 7402-182. Formerly RCW 89.26.470.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

89.30.547 Negotiable bonds of general improvement or divisional district—Sale or exchange price. (1) General improvement or divisional district bonds issued under the provisions of this chapter shall not be sold for less than ninety percent of their par value, and refunding bonds shall not be sold or exchanged for less than their par value.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39-46 RCW. [1983 c 167 § 259; 1927 c 254 § 183; RRS § 7402-183. Formerly RCW 89.26.520.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

89.30.550 Negotiable bonds of general improvement or divisional district—Pledge of bonds to United States. Such bonds may be pledged to the United States under any contract with the United States authorized by federal statute, for the purpose of furthering any of the objects and purposes of the district organization. [1927 c 254 § 184; RRS § 7402-184. Formerly RCW 89.26.530.]

89.30.553 Negotiable bonds of general improvement or divisional district—Public or private sale—Payment in property, labor, etc. Such bonds, or any portion thereof, may be sold at public or private sale, and property or property rights, labor and material, necessary to carry out the objects and purposes of said bond issue may be received by the district board in payment therefor. [1927 c 254 § 185; RRS § 7402-185. Formerly RCW 89.26.540.]

89.30.556 Negotiable bonds of general improvement or divisional district—Negotiability—Execution. (1) All general improvement or divisional district bonds issued under the provisions of this chapter shall be negotiable in form, shall be signed by the president of the reclamation district board and secretary of said district and shall have the seal of the district impressed thereon.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 260; 1927 c 254 § 186; RRS § 7402-186. Formerly RCW 89.26.490.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

89.30.565 Negotiable bonds of general improvement or divisional district—Moneys paid to county treasurer. The proceeds of bond sales for cash shall be paid by the purchaser to the county treasurer of the county in which the organization of the district was effected or to his duly authorized agent and credited to the proper fund. [1927 c 254 § 189; RRS § 7402-189. Formerly RCW 89.26.560.]

89.30.568 Negotiable bonds of general improvement or divisional district—Bonds paramount lien on moneys in fund. Bonds issued for or in behalf of any general improvement district or any divisional district under the provisions of this chapter, shall constitute a lien upon the moneys in any fund set apart for their payment paramount and superior to that of any other obligation of whatsoever nature against said fund except that of a prior bond issue payable from said fund. [1927 c 254 § 190; RRS § 7402-190. Formerly RCW 89.26.570.]

89.30.571 Assessments in general improvement or divisional district—Annual ad valorem basis. Assessments made in order to carry out the purposes of any general improvement district or of any divisional district, authorized in this chapter, shall be made annually on an ad valorem basis against the lands and improvements thereon, included within the operation of any such district; *Provided*, That in assessing lands having and using a water right independent of the district system, the value of such water right shall be deducted from the assessable value of said lands. [1927 c 254 § 191; RRS § 7402-191. Formerly RCW 89.26.720.]

89.30.574 Assessments in general improvement or divisional district—Assessment roll. On or before the first Tuesday in November of each year, the secretary of the district shall prepare and file with the district board

for the use of any general improvement or divisional district authorized under this chapter, an assessment roll on which must be listed all the assessable property within such general improvement or divisional district. [1927 c 254 § 192; RRS § 7402-192. Formerly RCW 89.26.700.]

89.30.577 Assessments in general improvement or divisional district—Contents of assessment roll. On such assessment roll must be specified in separate columns, under appropriate headings, the following:

(1) The name of the person to whom the property is assessed, if not known then to "unknown owners".

(2) Land by township, range, section or fractional section and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon.

(3) City and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town, and the improvements thereon.

(4) The cash value of real estate other than city or town lots.

(5) The cash value of improvements on such real estate.

(6) The cash value of city and town lots.

(7) The cash value of improvements on city and town lots.

(8) The total value of all property assessed.

(9) The total value of all property after equalization by the board of directors.

(10) Such other things as the board of directors may require. [1927 c 254 § 193; RRS § 7402-193. Formerly RCW 89.26.710.]

89.30.580 Assessments in general improvement or divisional district—Basis of valuation. The value of such lands and improvements thereon shown on the county general tax roll, last equalized, shall be taken as the basis of valuation wherever possible in preparing said district assessment roll. [1927 c 254 § 194; RRS § 7402-194. Formerly RCW 89.26.730.]

89.30.583 Assessments in general improvement or divisional district—Valuation of lands not on tax roll. Lands and improvements not shown on the county general tax roll shall be given such valuation on the district assessment roll as the secretary shall determine having regard to the equalized valuation of similar private lands in the vicinity for general tax purposes. [1927 c 254 § 195; RRS § 7402-195. Formerly RCW 89.26.740, part.]

89.30.586 Assessments in general improvement or divisional district—Values on roll are conclusive, when. The values of land fixed by the secretary on the district assessment roll shall be conclusive upon all persons unless challenged before the district board at the time of the equalization of said roll. [1927 c 254 § 196; RRS § 7402-196. Formerly RCW 89.26.740, part.]

89.30.589 Assessments in general improvement or divisional district—Assessments for prior years—Expense for delinquencies. Any property which may have escaped assessment for any year or years shall in addition to the assessment for the then current year be assessed for such year or years with the same effect and with the same penalties as are provided for such current year, and any property delinquent in any year may be directly assessed during the current year for any expense caused the district on account of such delinquency. [1927 c 254 § 197; RRS § 7402-197. Formerly RCW 89.26.750.]

89.30.592 Assessments in general improvement or divisional district—Roll to segregate lands as to counties. Where the general improvement or divisional district embraces lands lying in more than one county, the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [1927 c 254 § 198; RRS § 7402-198. Formerly RCW 89.26.760.]

89.30.595 Assessments in general improvement or divisional district—Roll to district board—Notice of equalization. On or before the first Tuesday in November each year, the secretary shall complete the general improvement or divisional district assessment roll and deliver it to the district board who shall immediately direct the secretary to give a notice thereof and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper in each of the counties comprising such district. [1927 c 254 § 199; RRS § 7402-199. Formerly RCW 89.26.770.]

89.30.598 Assessments in general improvement or divisional district—Time for equalization meeting—Inspection of roll. The time fixed for said meeting shall not be less than twenty nor more than thirty days from the day of the first publication of the notice and in the meantime the assessment roll shall remain in the office of the secretary for the inspection of all persons interested. [1927 c 254 § 200; RRS § 7402-200. Formerly RCW 89.26.780.]

89.30.601 Assessments in general improvement or divisional district—Hearing before equalization board—Authority. Upon the day specified in the notice of the meeting of the board of equalization, the board of directors which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them and the board may change the valuation as may be just. [1927 c 254 § 201; RRS § 7402-201. Formerly RCW 89.26.790.]

89.30.604 Assessments in general improvement or divisional district—Changes on roll to be noted—

Completed roll to county treasurers. The secretary shall be present during the sessions of the board of equalization, and note all changes made in the valuation of property and in the names of the persons whose property is assessed and on or before the first day of January next following, he shall complete the assessment roll as finally equalized by the board and deliver the segregations of the same to the respective county treasurers concerned. [1927 c 254 § 202; RRS § 7402-202. Formerly RCW 89.26.800.]

89.30.607 Assessments in general improvement or divisional district—Annual levy for bonds and interest. The board of directors shall in each year before said assessment roll for any general improvement or divisional district herein authorized, is delivered to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds issued for the benefit of said district, and shall beginning in the year preceding the maturity of any series of the bonds of any issue, levy an assessment for the ensuing year and from year to year in an amount sufficient to pay and discharge said outstanding bonds as they mature. [1927 c 254 § 203; RRS § 7402-203. Formerly RCW 89.26.830.]

89.30.610 Assessments in general improvement or divisional district—Levy for contracts with state or United States or for other charges. Said board shall also levy an assessment sufficient to provide for all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington authorized under this chapter. A similar levy of assessment shall be made by the board for any other item chargeable against the lands of such district under the provisions of this chapter. [1927 c 254 § 204; RRS § 7402-204. Formerly RCW 89.26.840.]

89.30.613 Assessments in general improvement or divisional district—Levy for delinquencies. The board shall also at the time of making the annual levy for any general improvement or divisional district authorized under this chapter, estimate all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount to cover any deficit that may have resulted from any delinquent assessments for any preceding year. [1927 c 254 § 205; RRS § 7402-205. Formerly RCW 89.26.850.]

89.30.616 Assessments in general improvement or divisional district—Collected assessments to constitute designated special funds. Assessments against lands in any general improvement or divisional district authorized under this chapter, when collected by the county treasurer shall constitute a special fund or funds as the case may be, to be called respectively, the "bond fund of general improvement or divisional district No. _____", the "contract fund of general improvement or divisional district No. _____", the "warrant fund of general improvement or divisional district No. _____", and any

other special fund authorized by law. [1983 c 167 § 261; 1927 c 254 § 206; RRS § 7402-206. Formerly RCW 89.26.860.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.619 Assessments in general improvement or divisional district—Procedure on failure to deliver roll—Preparation, equalization, levy by county commissioners. If the annual assessment roll or segregation thereof for any general improvement or divisional district authorized under this chapter, has not been delivered to the respective county treasurers concerned on or before the first day of January following the equalization thereof, any said county treasurer shall immediately notify the secretary of the district by registered mail that unless said roll is delivered to said county treasurer within ten days from the receipt of said notice, the board of county commissioners of the county in which the organization of the reclamation district was effected will cause an assessment roll for the district to be prepared and shall equalize the same if necessary and make the levy required by this chapter. [1927 c 254 § 207; RRS § 7402-207. Formerly RCW 89.26.810.]

89.30.622 Assessments in general improvement or divisional district—Manner and effect of levy by county commissioners—Expenses. Any levy of assessments so made by said board of county commissioners shall be made in the same manner and with like effect as if the same had been made and equalized by the board of directors of the reclamation district and all expenses incidental thereto shall be borne by the district. [1927 c 254 § 208; RRS § 7402-208. Formerly RCW 89.26.820.]

89.30.625 Assessments in general improvement or divisional district—County treasurer may perform duties of district secretary, when. In case of the neglect or refusal of the secretary of the reclamation district to perform the duties imposed by law, then the treasurer of the county in which the organization of the reclamation district was effected may perform such duties and shall be accountable therefor on his official bond as in other cases. [1927 c 254 § 209; RRS § 7402-209. Formerly RCW 89.22.460.]

89.30.628 Assessments in general improvement or divisional district—Lien of assessment, when attaches. The assessment upon the real property in any general improvement or divisional district authorized under this chapter, shall be a lien against the property assessed from and after the first day of March in the year in which it is levied but as between a grantor and a grantee such lien shall not attach until the first Monday of February of the succeeding year. [1927 c 254 § 210; RRS § 7402-210. Formerly RCW 89.28.200.]

89.30.631 Assessments in general improvement or divisional district—Assessment lien paramount—When extinguished. The lien for said assessments shall be paramount and superior to any other lien theretofore

or thereafter created, whether by mortgage, judgment or otherwise except a lien for prior assessments and for general taxes, and such lien shall not be extinguished until the assessments are paid or the property sold for the payment thereof and deed issued as provided by law. [1927 c 254 § 211; RRS § 7402-211. Formerly RCW 89.28.210.]

89.30.634 Assessments in general improvement or divisional district—When assessments due and payable—Delinquency date. The assessments specified in said assessment roll shall become due and payable on the first Monday of February of the year succeeding the equalization of said assessments at the office of each respective county treasurer and said assessments shall become delinquent at five o'clock in the afternoon of the thirty-first day of May thereafter unless fifty percent thereof shall have been paid. [1927 c 254 § 212; RRS § 7402-212. Formerly RCW 89.28.220, part.]

89.30.637 Assessments in general improvement or divisional district—When assessment delinquent—Interest rate. If the whole or fifty percent thereof shall not have been paid on or before five o'clock in the afternoon on the thirty-first day of May as above provided, the said assessments shall become delinquent and shall draw interest at the rate of twelve percent per annum until paid. [1927 c 254 § 213; RRS § 7402-213. Formerly RCW 89.28.220, part.]

89.30.640 Installment payments—Delinquency. If fifty percent of said assessments against any tract of land is paid on or before five o'clock in the afternoon of the thirty-first day of May aforesaid, then the remainder thereof will not become delinquent until the thirtieth day of November next following. The second installment of assessments shall become delinquent at five o'clock in the afternoon on the thirtieth day of November unless sooner paid and the same interest shall attach thereto as provided in the case of the delinquency of the entire assessment. [1927 c 254 § 214; RRS § 7402-214. Formerly RCW 89.28.230.]

89.30.643 Installment payments—Assessment book—Contents. Upon receiving the assessment roll for any general improvement or divisional district authorized herein, the county treasurer shall prepare therefrom an assessment book in which shall be written the descriptions of the land as they appear in the assessment roll, the name of the owner or owners where known, and if assessed to unknown owners then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be provided in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments. [1927 c 254 § 215; RRS § 7402-215. Formerly RCW 89.28.240.]

89.30.646 Installment payments—Entry of payments—Receipt. Upon the payment of any said assessment, the county treasurer shall enter the date of

payment in said assessment book opposite the description of the land and the name of the person paying, and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed. [1927 c 254 § 216; RRS § 7402-216. Formerly RCW 89.28.250.]

89.30.649 Installment payments—Statement of assessments levied to be furnished on request. It shall be the duty of the county treasurer of the county in which any land in the general improvement or divisional district is located, to furnish upon request of the owner or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request and all statements of general taxes covering any land in such district shall be accompanied by a statement showing the condition of district assessments against such lands: *Provided*, That the failure of the county treasurer to render any statement herein required of him, shall not render invalid any assessments made for any general improvement or divisional district or proceeding had for the enforcement and collection of such assessments pursuant to this chapter. [1927 c 254 § 217; RRS § 7402-217. Formerly RCW 89.28.260.]

89.30.652 Installment payments—County treasurers to make monthly remittances to district treasurer. It shall be the duty of the county treasurer of any county other than the county in which the organization of the reclamation district was effected to make monthly remittances to the county treasurer of the county in which the organization of the reclamation district was effected, covering all amounts collected by him for any said general improvement or divisional district during the preceding month. [1927 c 254 § 218; RRS § 7402-218. Formerly RCW 89.22.430.]

89.30.655 Delinquency and sale in general improvement and divisional districts—List to be posted. On or before the thirtieth day of June in each year each respective county treasurer concerned shall post the delinquency list which must contain the names of persons and the descriptions of the property delinquent and the amount of assessments, interest and costs opposite each name and the description in all cases where payment of fifty percent or more of the assessment against any tract of land has not been made on or before the thirty-first day of May next preceding. Likewise on or before the fifteenth day of December in each year he must post the delinquency list of all persons delinquent in the payment of the final installment of the fifty percent of said assessments as in this chapter provided. [1927 c 254 § 219; RRS § 7402-219. Formerly RCW 89.28.400.]

89.30.658 Delinquency and sale in general improvement and divisional districts—Notice of delinquency, contents, posting. Said county treasurer must append to and post with the delinquency list a notice that unless the assessment delinquent together with interest and

costs are paid, the real property upon which said assessments are a lien will be sold at public auction. Said notice and delinquent list shall be posted at least twenty days prior to the date of the sale. One copy thereof shall be posted in the office of the county treasurer making the collection, one copy in the office of the board of directors, and one copy in each of three public places in the portion of said general improvement or divisional district lying in said county. [1927 c 254 § 220; RRS § 7402-220. Formerly RCW 89.28.410.]

89.30.661 Delinquency and sale in general improvement and divisional districts—Publication of list of posted places and notice of sale. Concurrent as nearly as possible with the day of the posting required in the preceding section, the said county treasurer shall publish a list of the places where said notices are posted and in connection therewith a notice that unless said delinquent assessments together with the interest and costs are paid, the real property upon which the said assessments are a lien will be sold at public auction. [1927 c 254 § 221; RRS § 7402-221. Formerly RCW 89.28.420.]

89.30.664 Delinquency and sale in general improvement and divisional districts—Publication of notices—Contents—Time and place of sale. Such notice must be published once a week for two successive weeks (three issues) in a newspaper of general circulation published in the county within which the land is located but said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than thirty nor more than forty-five days from the date of posting and from the date of the first publication of the notice thereof and the place must be at some point designated in said notices by said treasurer. [1927 c 254 § 222; RRS § 7402-222. Formerly RCW 89.28.430.]

89.30.667 Delinquency and sale in general improvement and divisional districts—Sale of land for delinquency. The treasurer of the county in which the land is situated shall conduct the sale of all land situated therein and must collect the assessments due as shown on the delinquency list together with interest from the date of delinquency at the rate of twelve percent per annum, and the costs of sale. [1927 c 254 § 223; RRS § 7402-223. Formerly RCW 89.28.440.]

89.30.670 Delinquency and sale in general improvement and divisional districts—How conducted. On the day fixed for the sale or on some subsequent day to which the treasurer may have postponed it, of which postponement he must give notice at the time of making such postponement, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same beginning at the head of the list and continuing alphabetically or in numerical order of the parcels, lots and blocks until completed. [1927 c 254 § 224; RRS § 7402-224. Formerly RCW 89.28.460.]

89.30.673 Delinquency and sale in general improvement and divisional districts—Postponement of sale. The county treasurer may postpone the date of commencing the sale or may postpone the sale from day to day by making oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day fixed. [1927 c 254 § 225; RRS § 7402-225. Formerly RCW 89.28.450.]

89.30.676 Delinquency and sale in general improvement and divisional districts—Designation of portion to be sold—Sale by parts. The owner or person in possession of any real estate offered for sale for assessments thereon may designate in writing to the county treasurer by whom the sale is to be made and prior to the sale, what portion of the property he wishes sold, if less than the whole, but if the owner or possessor does not, then the treasurer may designate it and the person who will take the least quantity of the land or in case an undivided interest is assessed then the smallest portion of the interest, and pay the assessment, interest and cost due including one dollar to the treasurer for a duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. [1927 c 254 § 226; RRS § 7402-226. Formerly RCW 89.28.470.]

89.30.679 Delinquency and sale in general improvement and divisional districts—Resale upon purchaser's default. If the purchaser does not pay the assessment, interest and costs before ten o'clock a.m. the day following the sale, the property must be resold on the next day for the assessment, interest and costs. [1927 c 254 § 227; RRS § 7402-227. Formerly RCW 89.28.480.]

89.30.682 Delinquency and sale in general improvement and divisional districts—Reclamation district as purchaser. In case there is no purchaser in good faith for the property on the first day that the property is offered for sale and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the reclamation district as the purchaser, and the duplicate certificate shall be held with the original in the office of the county treasurer. [1927 c 254 § 228; RRS § 7402-228. Formerly RCW 89.28.490.]

89.30.685 Delinquency and sale in general improvement and divisional districts—Entry of sale when district is purchaser—Credit. In case the district is the purchaser, the treasurer shall make an entry "sold to the district", and he shall receive proper credit for the amount of the sale in his settlement with the district. [1927 c 254 § 229; RRS § 7402-229. Formerly RCW 89.28.500.]

89.30.688 Delinquency and sale in general improvement and divisional districts—Rights of district as purchaser. A reclamation district as purchaser at said sale shall be entitled to the same rights as a private purchaser and may assign or transfer the certificate of sale

upon the payment of the amount which would be due as redemption were it made by the owner. Such transfer shall be made by the president and secretary of the district on the duplicate certificate which shall be delivered by the county treasurer to the assignee. The assignee shall be required to pay a fee of one dollar for such duplicate certificate. [1927 c 254 § 230; RRS § 7402-230. Formerly RCW 89.28.510.]

89.30.691 Delinquency and sale in general improvement and divisional districts—Deed to district in absence of redemption—Conveyance. If no redemption is made of land for which a reclamation district holds a certificate of purchase, the district will be entitled to receive a treasurer's deed therefor in the same manner as a private person would be entitled thereto, and may convey the title so acquired by deed executed by the president and secretary of the board. [1927 c 254 § 231; RRS § 7402-231. Formerly RCW 89.28.820, part.]

89.30.694 Delinquency and sale in general improvement and divisional districts—Resolution to convey property acquired by district—Price. Authority to convey any property thus acquired must be conferred by resolution of the board entered on its minutes fixing the price at which such sale may be made. [1927 c 254 § 232; RRS § 7402-232. Formerly RCW 89.28.820, part.]

89.30.697 Delinquency and sale in general improvement and divisional districts—Lease of property acquired by district. In the event that the district board shall determine that the best interests of the district will be conserved by the leasing of any property acquired for delinquent assessments, it shall have authority to lease the same for a period not exceeding five years on such terms and conditions as the board may require. [1927 c 254 § 233; RRS § 7402-233. Formerly RCW 89.28.830.]

89.30.700 Delinquency and sale in general improvement and divisional districts—Disposition of proceeds of sale or lease by district. All moneys received by the reclamation district for transfers of certificates of sale, or through sale or lease of property acquired on account of sales for delinquent assessments, shall be paid to the county treasurer of the county in which the lands involved are situated and by him credited to the funds for which the assessments were levied in proportion to the right of each fund respectively. [1927 c 254 § 234; RRS § 7402-234. Formerly RCW 89.28.840.]

89.30.703 Delinquency and sale in general improvement and divisional districts—Reconveyance to person entitled to redemption, when. When lands have been deeded by the county treasurer to the reclamation district on account of delinquent assessments, if title shall remain vested in the district and if in the judgment of the board of directors said sale for delinquent assessments shall have resulted from unavoidable accident, inadvertency or misfortune and without intent of the

owner or persons entitled to make redemption, to permit said assessments to become delinquent and the land to be sold, the board of directors may, pursuant to an order entered upon the minutes of the board, cause said land to be reconveyed to the owner or person entitled to redemption within the period of one year after deed is issued, upon the payment by said owner or person who would have been entitled to make redemption before issuance of deed, of the total amount of assessments, interest and costs, subsequent assessments and an additional penalty of twenty-five percent of the amount for which the land was sold: *Provided*, That nothing herein contained shall be construed to prevent the district from selling or leasing property acquired at sales for delinquent assessments immediately after the deed has been delivered to the district. [1927 c 254 § 235; RRS § 7402-235. Formerly RCW 89.28.850.]

89.30.706 Delinquency and sale in general improvement and divisional districts—Certificate of sale in duplicate, contents. After receiving the amount of assessments, interest and costs, the county treasurer must make out in duplicate a certificate dated on the day of the sale stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments giving the amount and year of assessment, and specifying the time when the purchaser shall be entitled to a deed. [1927 c 254 § 236; RRS § 7402-236. Formerly RCW 89.28.520.]

89.30.709 Delinquency and sale in general improvement and divisional districts—Certificate of sale—Form, filing, delivery. The certificate of sale must be signed by the treasurer making the sale and filed in his office. A duplicate of said certificate shall be delivered to any purchaser, other than the district. [1927 c 254 § 237; RRS § 7402-237. Formerly RCW 89.28.530.]

89.30.712 Delinquency and sale in general improvement and divisional districts—Certificate of sale may include several tracts. In case of a sale to a person or a district of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [1927 c 254 § 238; RRS § 7402-238. Formerly RCW 89.28.540.]

89.30.715 Delinquency and sale in general improvement and divisional districts—Entry of sale in assessment book, inspection—Filing certificate. The county treasurer before delivering any copy of a certificate of sale, must file the same and enter in the assessment book opposite the description of the land sold the date of sale, the purchaser's name and the amount paid therefor, and must regularly number the descriptions on the margin of the assessment book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours when not in actual use. [1927 c 254 § 239; RRS § 7402-239. Formerly RCW 89.28.550.]

89.30.718 Delinquency and sale in general improvement and divisional districts—Lien of assessment vested in purchaser—When divested. On filing the certificate of sale as provided herein, the lien of the assessment vests in the purchaser and is only divested by the payment to the county treasurer making the sale of the purchase money, the costs of the certificate, and interest thereon at twelve percent per annum from the date of sale until redemption for the use of the purchaser. [1927 c 254 § 240; RRS § 7402–240. Formerly RCW 89.28.560.]

89.30.721 Delinquency and sale in general improvement and divisional districts—Redemption of property sold. A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest within one year from the date of purchase by paying the amount of the purchase price, cost of certificate and interest and the amount of any assessments which any such purchaser may have paid thereon after purchase by him together with like interest on such amount, and if the reclamation district is the purchaser, the redemptioner shall pay in addition to the purchase price and interest, the amount of any assessments levied against said land during the period of redemption and which are at that time delinquent. [1927 c 254 § 241; RRS § 7402–241. Formerly RCW 89.28.700.]

89.30.724 Delinquency and sale in general improvement and divisional districts—Redemption in coin to treasurer—To whom credited. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate or his assignee and pay it on demand to such person or his assignee. No redemption shall be made except to the county treasurer of the county in which the land is situated. [1927 c 254 § 242; RRS § 7402–242. Formerly RCW 89.28.710.]

89.30.727 Delinquency and sale in general improvement and divisional districts—Entry of redemption in book and on certificate. Upon completion of redemption, the county treasurer to whom redemption has been made, shall enter the word "redeemed", the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the certificate is made. [1927 c 254 § 243; RRS § 7402–243. Formerly RCW 89.28.720.]

89.30.730 Delinquency and sale in general improvement and divisional districts—Deed in absence of redemption, contents. If the property is not redeemed within one year from the date of sale, the county treasurer of the county in which the land sold is situated, must make to the purchaser or his assignee a deed of the property reciting in the deed substantially the matters contained in the certificate and that no person redeemed

the property during the time allowed by law for its redemption. [1927 c 254 § 244; RRS § 7402–244. Formerly RCW 89.28.730.]

89.30.733 Delinquency and sale in general improvement and divisional districts—Fee for deed—Several parcels may be included in one deed. The treasurer shall receive from the purchaser for the use of the district one dollar for making such deed. When any person or district holds a duplicate certificate covering more than one tract of land, the several parcels or tracts of land mentioned in the certificate may be included in one deed. [1927 c 254 § 245; RRS § 7402–245. Formerly RCW 89.28.740.]

89.30.736 Delinquency and sale in general improvement and divisional districts—Recitals in deed—Evidentiary effect. The matter recited in the certificate of sale must be recited in the deed and such deed duly acknowledged or proved is prima facie evidence that:

- (1) The property was assessed as required by law.
- (2) The property was equalized as required by law.
- (3) The assessments were levied in accordance with law.
- (4) The assessments were not paid.
- (5) At a proper time and place the property was sold as prescribed by law, and by the proper officers.
- (6) The person who executed the deed was the proper officer. [1927 c 254 § 246; RRS § 7402–246. Formerly RCW 89.28.750.]

89.30.739 Delinquency and sale in general improvement and divisional districts—Deed conclusive, exception. Such deed duly acknowledged or proved is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the secretary inclusive up to the execution of the deed. [1927 c 254 § 247; RRS § 7402–247. Formerly RCW 89.28.760.]

89.30.742 Delinquency and sale in general improvement and divisional districts—Title conveyed by deed. The deed conveys to the grantee the absolute title to the lands described therein free from all encumbrances except when the land is owned by the United States or the state of Washington in which case it is prima facie evidence of the right of possession. [1927 c 254 § 248; RRS § 7402–248. Formerly RCW 89.28.770.]

89.30.745 Delinquency and sale in general improvement and divisional districts—Probative force of assessment book and delinquency list. The assessment book or delinquency list, or a copy thereof, certified by the secretary showing unpaid assessments against any person or property is prima facie evidence of the assessment of the property, the delinquency, the amount of the assessments due and unpaid and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. [1927 c 254 § 249; RRS § 7402–249. Formerly RCW 89.28.570.]

89.30.748 Delinquency and sale in general improvement and divisional districts—Sale not avoided by misnomer or mistake as to ownership. When land is sold for assessments correctly imposed as the property of a particular person no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof affects the sale or renders it void or voidable. [1927 c 254 § 250; RRS § 7402–250. Formerly RCW 89.28.780.]

89.30.751 Foreclosure of lien for general taxes—Payment in full or sale subject to assessments due. The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all general improvement or divisional district assessments due and outstanding against the whole or any portion of the property included in such certificate of delinquency, and the amount of all assessments so paid together with interest at the rate of twelve percent per annum reckoned from the date of delinquency of said assessments shall be included in the amount for which foreclosure may be had or if said certificate holder elects to foreclose such certificate without paying such assessments, the purchaser at such foreclosure sale shall acquire title to such property subject to all such district assessments. [1927 c 254 § 251; RRS § 7402–251. Formerly RCW 89.28.790.]

89.30.754 Liability of county for assessments after sale to county for general taxes. Property within a general improvement or divisional district authorized under the provisions of this chapter, acquired by a county pursuant to a foreclosure and sale for general taxes, shall, nevertheless, be liable for all assessments levied by the district subsequent to the date of the sale for delinquent general taxes to the county, which assessments the board of county commissioners may at its option pay from the current expense fund of the county or execute and deliver to the district a deed from the county to the district in lieu of the payment of said assessments. [1927 c 254 § 252; RRS § 7402–252. Formerly RCW 89.28.800.]

89.30.757 Sale of county lands for delinquent assessments. The county treasurer shall have authority to sell lands, owned by the county, for delinquent assessments levied against the same subsequent to the acquisition of said property by the county in the same manner and with the same force and effect as though said property were owned by a private individual. [1927 c 254 § 253; RRS § 7402–253. Formerly RCW 89.28.810.]

89.30.760 Special assessments by general improvement or divisional district—Authorization by electors. Special assessments may be voted by the electors of any general improvement district or divisional district within the reclamation district for any of the purposes for which bonds of the district as herein authorized may be issued. [1927 c 254 § 254; RRS § 7402–254. Formerly RCW 89.28.010.]

89.30.763 Special assessments by general improvement or divisional district—Levy and collection. In the event that special assessments are voted by the electors of the district, levy for the same against the lands within such district shall be made on the completion and equalization of the assessment roll each year, which special assessment roll shall be prepared, equalized, the levy made and assessments collected at the same time and in the same manner and by the same officers that the assessment roll is prepared, equalized and assessments collected for the payment of bonds and the district board and other officers shall have the same powers and functions for the purposes of said voted special assessment as possessed by them in case of levy of assessments to pay bonds of the district. [1927 c 254 § 255; RRS § 7402–255. Formerly RCW 89.28.060.]

89.30.766 Special assessments by general improvement or divisional district—Proposition to be submitted to electors. When it is desired to levy special assessments for any of the purposes for which bonds of the district may be issued, the proposition to levy such special assessments shall be submitted to the electors of the general improvement district or divisional district as the case may be, at an election called for that purpose. [1927 c 254 § 256; RRS § 7402–256. Formerly RCW 89.28.020.]

89.30.769 Special assessments by general improvement or divisional district—Election, how called, conducted, etc. Such election shall be called, provided for, notice thereof given, shall be conducted, and the results thereof canvassed by the same officers in the same manner and with the same force and effect as provided herein for bond elections in such districts. [1927 c 254 § 257; RRS § 7402–257. Formerly RCW 89.28.030.]

89.30.772 Special assessments by general improvement or divisional district—Notice of election—Ballots. The notice of election must specify the amount of money proposed to be raised and the purpose for which it is intended to be used and the number of installments in which it is to be paid. The ballot at such election shall contain the words "Assessment—Yes" and "Assessment—No". [1927 c 254 § 258; RRS § 7402–258. Formerly RCW 89.28.040.]

89.30.775 Special assessments by general improvement or divisional district—Indebtedness authorized. If the majority of the votes cast at such election are "Assessment—Yes", the board may immediately or at intervals thereafter incur indebtedness to the amount of said special assessment for any of the purposes for which the proceeds of said assessment may be used. [1927 c 254 § 259; RRS § 7402–259. Formerly RCW 89.28.050.]

89.30.778 Special assessments by general improvement or divisional district—Notes—Terms. Said board in such event may provide for the payment of said indebtedness by the issue and sale of notes of the district

to an amount equal to said authorized indebtedness which notes shall be payable in such equal installments, not exceeding three in number, as the board shall direct. Such notes may be in any form, including bearer notes or registered notes as provided in RCW 39.46.030. Such notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 262; 1927 c 254 § 260; RRS § 7402-260. Formerly RCW 89.28.070, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.781 Special assessments by general improvement or divisional district—Notes payable exclusively by assessments. Said notes shall be payable exclusively by assessments levied at the time of the regular annual levy each year thereafter until fully paid. All the lands within the general improvement district or divisional district as the case may be, shall be and remain liable to an annual assessment for the payment of said notes with interest until fully paid. [1983 c 167 § 263; 1927 c 254 § 261; RRS § 7402-261. Formerly RCW 89.28.080.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.784 Special assessments by general improvement or divisional district—Interest on notes. (1) Notes issued under the provisions of this chapter shall bear interest at a rate or rates authorized by the district board, payable semiannually.

(2) Notwithstanding subsection (1) of this section, such notes may be issued in accordance with chapter 39.46 RCW. [1983 c 167 § 264; 1927 c 254 § 262; RRS § 7402-262. Formerly RCW 89.28.070, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

89.30.787 Tolls for electricity and water—Collection, deposit. The district board shall have authority to fix and charge tolls for the sale or lease and/or distribution of electric power or water, as herein provided, and to collect said tolls from all persons using such service. All tolls shall be collected by such officer as the board shall designate and shall be deposited monthly with the county treasurer of the county in which the organization of the reclamation district was effected, and shall be credited to such fund of the district as the district board shall designate. [1933 c 149 § 18; 1927 c 254 § 263; RRS § 7402-263. Formerly RCW 89.26.040.]

89.30.790 Tolls for electricity and water—Toll collector's bond. Any officer of the district collecting tolls as herein provided, shall be required to give a surety bond in double the probable amount of monthly collections conditioned that he will faithfully account to the reclamation district for all tolls collected under the provisions of this chapter. [1927 c 254 § 264; RRS § 7402-264. Formerly RCW 89.26.050.]

89.30.793 Jurisdiction of courts. At the instance of the board of directors of any reclamation district created under this chapter, the superior court of the state of

Washington shall have original jurisdiction to judicially examine, approve and confirm any or all proceedings pertaining to the organization of the reclamation district or of any general improvement or divisional district therein, and any or all proceedings had or contemplated in the exercise of any of the functions or powers of any of such districts. [1927 c 254 § 265; RRS § 7402-265. Formerly RCW 89.24.700.]

89.30.796 Jurisdiction of courts—Petition for judicial determination. For the purpose of securing such judicial determination, the board of directors of the reclamation district shall file in the superior court of the county in which the lands of said district or some portion thereof are situated, a petition praying in effect that the proceedings aforesaid be examined, approved and confirmed by the court. [1927 c 254 § 266; RRS § 7402-266. Formerly RCW 89.24.710, part.]

89.30.799 Jurisdiction of courts—Contents of petition. The petition shall state the facts generally showing the proceedings which are sought to be judicially examined. [1927 c 254 § 267; RRS § 7402-267. Formerly RCW 89.24.710, part.]

89.30.802 Jurisdiction of courts—Notice of hearing of petition. The court shall fix a time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall mention the time and place fixed for the hearing of the petition and the prayer of the petition, and shall state that any person interested in said proceedings may on or before the day fixed for the hearing of said petition demur to or answer the same. [1927 c 254 § 268; RRS § 7402-268. Formerly RCW 89.24.720.]

89.30.805 Jurisdiction of courts—Notice, how given and published. The notice shall be given and published in the same manner and for the same length of time as that required herein for the notice of hearing on the petition to organize a reclamation district. [1927 c 254 § 269; RRS § 7402-269. Formerly RCW 89.24.730.]

89.30.808 Jurisdiction of courts—Demurrer or answer to petition. Any person interested in the proceedings sought to be judicially examined may demur to or answer said petition. [1927 c 254 § 270; RRS § 7402-270. Formerly RCW 89.24.750.]

89.30.811 Jurisdiction of courts—Rules which govern. The rules of pleading, practice and appeal provided by the statutes of this state which are not inconsistent with any of the provisions herein, are applicable to and shall govern the special proceedings for the judicial examination and determination of any of the district proceedings aforesaid. [1927 c 254 § 271; RRS § 7402-271. Formerly RCW 89.24.740.]

89.30.814 Jurisdiction of courts—Motion and order for new trial. A motion for a new trial must be made

upon the minutes of the court. The order granting a new trial must specify the issues to be reexamined on such new trial and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [1927 c 254 § 272; RRS § 7402-272. Formerly RCW 89.24.780.]

or unconstitutional. [1927 c 254 § 279; RRS § 7402-279.]

89.30.817 Jurisdiction of courts—Action in rem—Power of court. Said action shall be one in rem against all persons claiming any right or interest in the proceedings concerned and upon the hearing of such special proceedings the court shall have full power and jurisdiction to examine and determine the legality and validity of and to approve and confirm each and all of the proceedings mentioned in the petition seeking judicial determination and all other proceedings which may affect the proceedings in question. [1927 c 254 § 273; RRS § 7402-273. Formerly RCW 89.24.760.]

89.30.820 Jurisdiction of courts—Errors disregarded—Approval in whole or part. The court in inquiring into the regularity, legality and correctness of said proceedings, must disregard any error, determination or omission which does not affect the substantial rights of the parties to said special proceedings and it may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. [1927 c 254 § 274; RRS § 7402-274. Formerly RCW 89.24.770.]

89.30.823 Jurisdiction of courts—Conclusiveness of judgment. The judgment rendered in such action unless appealed from within the time prescribed herein and upon final judgment upon appeal, shall be conclusive as to all matters determined by the court in said action against every person including those under disability as well as those free from disability. [1927 c 254 § 275; RRS § 7402-275. Formerly RCW 89.24.800.]

89.30.826 Jurisdiction of courts—Costs. The cost of the special judicial proceedings authorized herein may be allowed and apportioned between all of the parties in the discretion of the court. [1927 c 254 § 276; RRS § 7402-276. Formerly RCW 89.24.810.]

89.30.829 Jurisdiction of courts—Time for appeal. An appeal from an order granting or refusing a new trial or from the judgment in said action must be taken by the parties aggrieved within thirty days after the entry of said order or said judgment. [1927 c 254 § 277; RRS § 7402-277. Formerly RCW 89.24.790.]

89.30.832 Liberal construction. The provisions of this chapter and all proceedings thereunder shall be liberally construed with a view to effect their objects. [1927 c 254 § 278; RRS § 7402-278.]

89.30.835 Severability—1927 c 254. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged to be invalid

Title 90

WATER RIGHTS—ENVIRONMENT

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- 90.70** Puget Sound water quality authority.
- 90.72** Shellfish protection districts.

Reviser's note: Throughout Title 90 RCW references to "state hydraulics engineer", "supervisor of hydraulics", "division of hydraulics" have been deleted and substituted therewith is "supervisor of water resources", "division of water resources", and similar references since the powers and duties of the former have devolved upon the latter through a chain of statutes as follows: 1917 c 117 §§ 6, 7, 8 (state hydraulic engineer); 1921 c 7 §§ 61, 66, 72 and 135 (division of hydraulics in department of conservation and development); 1951 c 57 §§ 1, 2, 3 (division of water resources in the department of conservation and development); 1957 c 215 §§ 19, 20, 21 (name of department of conservation and development changed to department of conservation); see also: RCW 43.17.010, 43.17.020, 43.21.010, 43.21.130. The department of conservation was abolished by 1967 c 242 § 20, RCW 43.27A.180, and the division of water resources transferred to the department of water resources by 1967 c 242 § 8, RCW 43.27A.080. Powers, duties and functions of department of water resources transferred to department of ecology, see chapter 43.21A RCW.

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Chapter 90.03

WATER CODE—1917 ACT

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90.03.610 Exemption—Hazardous waste remedial action.

Prior acts on this subject: Code 1881 c 141; 1889 pp 706–728 §§ 1–67, 1889 p 728 § 1; 1889 p 729 §§ 1–2; 1891 c 142; 1899 c 131; 1901 cc 30, 33, 36; 1903 c 53; 1907 c 144 and 1909 c 209.

Aquifer protection areas: Chapter 36.36 RCW.

90.03.005 State water policy—Cooperation with other agencies—Reduction of wasteful practices. It is the policy of the state to promote the use of the public waters in a fashion which provides for obtaining maximum net benefits arising from both diversionary uses of the state's public waters and the retention of waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights. Consistent with this policy, the state supports economically feasible and environmentally sound development of physical facilities through the concerted efforts of the state with the United States, public corporations, Indian tribes, or other public or private entities. Further, based on the tenet of water law which precludes wasteful practices in the exercise of rights to the use of waters, the department of ecology shall reduce these practices to the maximum extent practicable, taking into account sound principles of water management and the most effective use of public and private funds, and, when appropriate, to work to that end in concert with the agencies of the United States and other public and private entities. [1979 ex.s. c 216 § 8.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.03.010 Appropriation of water rights—Existing rights preserved. The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in RCW 90.03.040, and the amount and priority thereof may be determined by the procedure set out in RCW 90.03.110 through 90.03.240. [1917 c 117 § 1; RRS § 7351. Prior: 1891 p 127 § 1. Formerly RCW 90.04.020.]

90.03.015 Definitions. As used in this chapter:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of ecology; and
- (3) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual. [1987 c 109 § 65.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.020 Units of water measurement. The legally recognized units of water measurement shall be as follows: For flowing water—one cubic foot of water per second of time, and to be designated "secondfoot." For absolute volume or quantity of water—forty-three thousand five hundred sixty cubic feet of water, and to be designated "acrefoot." [1917 c 117 § 2; RRS § 7352. Prior: 1890 p 729 § 1. Formerly RCW 90.04.010, part.]

90.03.030 Right to convey water along lake or stream. Any person may convey any water which he may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the department, upon the application of any person interested. [1987 c 109 § 68; 1917 c 117 § 3; RRS § 7353. Formerly RCW 90.28.050.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.040 Eminent domain—Use of water declared public use. The beneficial use of water is hereby declared to be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this chapter and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: *Provided*, That no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations. [1917 c 117 § 4; RRS § 7354. Formerly RCW 90.04.030.]

Eminent domain by corporations: Chapter 8.20 RCW.

90.03.050 Powers and duties of director of conservation through the division of water resources. See RCW 43.21.130.

90.03.060 Water masters—Appointment, compensation. Water masters shall be appointed by the department whenever it shall find the interests of the state or

of the water users to require them. The districts for or in which the water masters serve shall be designated water master districts, which shall be fixed from time to time by the department, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no district shall be created or continued where the need for the same does not exist. Water masters shall be supervised by the department, shall be compensated for services from funds of the department, and shall be technically qualified to the extent of understanding the elementary principals of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Counties and municipal and public corporations of the state are authorized to contribute moneys to the department to be used as compensation to water masters in carrying out their duties. All such moneys received by the department shall be used exclusively for said purpose. [1987 c 109 § 69; 1967 c 80 § 1; 1947 c 123 § 2; 1917 c 117 § 9; Rem. Supp. 1947 § 7359. Formerly RCW 90.08.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Stream patrolmen (approval, supervision of, by water masters): Chapter 90.08 RCW.

90.03.070 Water masters—Duties—Office space and equipment—Clerical assistance. It shall be the duty of the water master, acting under the direction of the department, to divide in whole or in part, the water supply of his district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He shall divide, regulate and control the use of water within his district by such regulation of headgates, conduits and reservoirs as shall be necessary to prevent the use of water in excess of the amount to which the owner of the right is lawfully entitled. Whenever, in the pursuance of his duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties. In addition to dividing the available waters and supervising the stream patrolmen in his district, he shall enforce such rules and regulations as the department shall from time to time prescribe.

The county or counties in which water master districts are created shall deputize the water masters appointed hereunder, and may without charge provide to each water master suitable office space, supplies, equipment and clerical assistance as are necessary to the water master in the performance of his duties. [1987 c 109 § 70; 1967 c 80 § 2; 1917 c 117 § 10; RRS § 7360. Formerly RCW 90.08.020.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Water master's power of arrest: RCW 90.03.090.

90.03.090 Water master's power of arrest. The water master shall have the power, within his or her district, to arrest any person in the act of violating any of the provisions of this chapter and to deliver such person promptly into the custody of the sheriff or other competent officer within the county and immediately upon such delivery the water master making the arrest shall, in writing and upon oath, make complaint before the proper district judge against the person so arrested. [1987 c 202 § 250; 1917 c 117 § 12; RRS § 7362. Formerly RCW 90.08.030.]

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

90.03.100 Prosecuting attorney, legal assistant. It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the department or any water master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney. [1987 c 109 § 71; 1917 c 117 § 13; RRS § 7363.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Attorney general to represent state, agencies, etc.: RCW 43.10.040.

Prosecuting attorney, duties: RCW 36.27.020(3), (4).

90.03.110 Determination of water rights—Petition—Statement and plan. Upon the filing of a petition with the department by one or more persons claiming the right to divert any waters within the state or when, after investigation, in the judgment of the department, the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the department to prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the department shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter, to wit:

(1) The names of all known persons claiming the right to divert said water, the right to the diversion of which is sought to be determined, and

(2) A brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto. [1987 c 109 § 72; 1917 c 117 § 14; RRS § 7364. Formerly RCW 90.12.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional powers and duties enumerated—Payment for from reclamation account: RCW 89.16.055.

Application of RCW sections to specific proceedings: RCW 90.14.200. Schedule of fees: RCW 90.03.470.

90.03.120 Determination of water rights—Order—Summons—Necessary parties. Upon the filing of the statement and map as provided in RCW 90.03.110 the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than sixty nor more than ninety days, after the making of such order: *Provided*, That for good cause, the court, at the request of the department, may modify said time period. A summons shall thereupon be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons claiming the right to divert the water involved and also all persons unknown claiming the right to divert the water involved, which said summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file a statement of claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: *Provided, however*, That any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding. [1987 c 109 § 73; 1977 ex.s. c 357 § 1; 1917 c 117 § 15; RRS § 7365. Formerly RCW 90.12.020.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.130 Determination of water rights—Service of summons. Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: *Provided*, That for good cause, the court, at the request of the department, as an alternative to personal service, may authorize service of summons to be made by certified mail, with return receipt signed by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending shall be prima facie evidence, upon the filing of an affidavit by the department, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). In cases where personal service can be had, such summons shall be served at least twenty days before the return day thereof. The summons by publication shall state that statements of claim must be filed within twenty days after the last publication or before the return date, whichever is later.

Personal service of summons may be made by department of ecology employees for actions pertaining to water rights. [1987 c 109 § 74; 1979 ex.s. c 216 § 2; 1977 ex.s. c 357 § 2; 1929 c 122 § 1; 1917 c 117 § 16; RRS § 7366. Formerly RCW 90.12.030.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

Commencement of actions (service of summons): Chapter 4.28 RCW. Manner of publication and form of summons: RCW 4.28.110.

Service of summons by publication—When authorized: RCW 4.28.100.

90.03.140 Determination of water rights—Statement by defendants. On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy thereof for the department, containing substantially the following:

- (1) The name and post office address of defendant.
- (2) The full nature of the right, or use, on which the claim is based.
- (3) The time of initiation of such right and commencement of such use.
- (4) The date of beginning and completion of construction.
- (5) The dimensions and capacity of all ditches existing at the time of making said statement.
- (6) The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.
- (7) The legal description of the land upon which said water has been, or may be, put to beneficial use, and the legal description of the subdivision of land on which the point of diversion is located.

Such statement shall be verified on oath by the defendant, and in the discretion of the court may be amended. [1987 c 109 § 75; 1929 c 122 § 2; 1917 c 117 § 17; RRS § 7367. Formerly RCW 90.12.040.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.150 Determination of water rights—Guardian ad litem for defendant. Whenever any defendant in any proceeding instituted under this chapter is an infant, or an alleged incompetent or disabled person for whom the court has not yet appointed either a guardian or a limited guardian, the court shall appoint a guardian ad litem for such minor or alleged incompetent or disabled defendant. [1977 ex.s. c 80 § 75; 1917 c 117 § 18; RRS § 7368. Formerly RCW 90.12.050.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Guardian ad litem

for infant: RCW 4.08.050.

for insane person: RCW 4.08.060.

90.03.160 Determination of water rights—Referral to department. Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the department to take testimony by its duly authorized designee, as referee, and the designee shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court. [1987 c 109 § 76; 1917 c 117 § 19; RRS § 7369. Formerly RCW 90.12.060.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.170 Determination of water rights—Hearing—Notice—Prior rights preserved. Thereupon the department shall fix a time and place for such hearing and serve written notice thereof upon all persons who have appeared in said proceeding, their agents or attorneys. Notice of such hearing shall be served at least ten days before the time fixed therefor. Such hearings may be adjourned from time to time and place to place. The duly authorized designee shall have authority to subpoena witnesses and administer oaths in the same manner and with the same powers as referees in civil actions. The fees and mileage of witnesses shall be advanced by the party at whose instance they are called as in civil actions. A final decree adjudicating rights or priorities, entered in any case decided prior to June 6, 1917, shall be conclusive among the parties thereto and the extent of use so determined shall be prima facie evidence of rights to the amount of water and priorities so fixed as against any person not a party to said decree. [1987 c 109 § 77; 1917 c 117 § 20; RRS § 7370. Formerly RCW 90.12.070.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Civil procedure—Costs: Chapter 4.84 RCW.

Courts of record—Witnesses: Chapter 2.40 RCW.

Trial procedure—Powers of referee: RCW 4.48.060.

90.03.180 Determination of water rights—Statement by defendants—Filing fee. At the time of filing the statement as provided in RCW 90.03.140, each defendant shall pay to the clerk of the superior court a fee of twenty-five dollars. [1982 c 15 § 2; 1979 ex.s. c 216 § 3; 1929 c 122 § 3; 1919 c 71 § 2; 1917 c 117 § 21; RRS § 7371. Formerly RCW 90.12.080, part.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.03.190 Determination of water rights—Transcript of testimony—Filing—Notice of hearing. Upon the completion of the taking of testimony it shall be the duty of the department's designee to prepare and file with the clerk of the superior court where such proceeding is pending, a transcript of the testimony taken at such hearing, in triplicate, together with all papers and exhibits offered and received in evidence and not already

a part of the record. He shall also make and file in said court a full and complete report as in other cases of reference in the superior court. Two of said transcripts shall be for the use of the parties as the court may direct. The court shall set a time for the hearing and the designee shall thereupon prepare a notice designating a time for the hearing of said report and serve a copy thereof, together with a copy of his report, on all persons, their agents or attorneys who have appeared in such proceeding. Such service shall be made not less than twenty days before the time for said hearing, either personally or by registered mail, and an affidavit of such service filed with the clerk. [1987 c 109 § 78; 1917 c 117 § 22; RRS § 7372. Formerly RCW 90.12.090.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.200 Determination of water rights—Exceptions to report—Decree—Appeal. Upon the filing of the evidence and the report of the department, any interested party may, on or before five days prior to the date of said hearing, file exceptions to such report in writing and such exception shall set forth the grounds therefor and a copy thereof shall be served personally or by registered mail upon all parties who have appeared in the proceeding. If no exceptions be filed, the court shall enter a decree determining the rights of the parties according to the evidence and the report of the department, whether such parties have appeared therein or not. If exceptions are filed the action shall proceed as in case of reference of a suit in equity and the court may in its discretion take further evidence or, if necessary, remand the case for such further evidence to be taken by the department's designee, and may require further report by him. Costs, not including taxable attorneys fees, may be allowed or not; if allowed, may be apportioned among the parties in the discretion of the court. Appeal may be taken to the supreme court or the court of appeals from such decree in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof. [1987 c 109 § 79; 1971 c 81 § 176; 1917 c 117 § 23; RRS § 7373. Formerly RCW 90.12.100.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.210 Determination of water rights—Interim regulation of water. During the pendency of such adjudication proceedings prior to judgment or upon appeal to the supreme court of the state or other appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: *Provided*, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. The bond shall be filed within five days following the service

of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. [1987 c 109 § 80; 1921 c 103 § 1; RRS § 7374. Formerly RCW 90.12.110.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.220 Determination of water rights—Failure to appear—Estoppel. Whenever proceedings shall be instituted for the determination of the rights to the use of water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree. [1917 c 117 § 24; RRS § 7375. Formerly RCW 90.12.120.]

90.03.230 Determination of water rights—Copy of decree to director. The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the director, who shall immediately enter the same upon the records of the department. [1987 c 109 § 81; 1917 c 117 § 25; RRS § 7376. Formerly RCW 90.12.130.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.240 Determination of water rights—Diversion certificate. Upon the final determination of the rights to the diversion of water it shall be the duty of the department to issue to each person entitled to the diversion of water by such determination, a certificate under his official seal, setting forth the name and post office address of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion and the place of use; the land to which said water right is appurtenant and when applicable the maximum quantity of water allowed. [1987 c 109 § 82; 1917 c 117 § 26; RRS § 7377. Formerly RCW 90.12.140.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.243 Determination of water rights—State to bear its expenses, when. The expenses incurred by the state in a proceeding to determine rights to water initiated under RCW 90.03.110 or 90.44.220 or upon appeal of such a determination shall be borne by the state. [1982 c 15 § 1.]

90.03.245 Determination of water rights—Scope. Rights subject to determination proceedings conducted under RCW 90.03.110 through 90.03.240 and 90.44.220 include all rights to the use of water, including all diversionary and instream water rights, and include rights to the use of water claimed by the United States.

Nothing in this section may be construed as establishing or creating any new rights to the use of water. This

section relates exclusively to the confirmation of water rights established or created under other provisions of state law or under federal laws. [1979 ex.s. c 216 § 1.]

Effective date—1979 ex.s. c 216: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1979 ex.s. c 216 § 12.] Because of this emergency section, section 2 of 1979 ex.s. c 216, RCW 90.03.130, was effective June 4, 1979; the remainder of 1979 ex.s. c 216 became effective September 1, 1979.

Severability—1979 ex.s. c 216: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 216 § 13.]

90.03.247 Minimum flows and levels—Departmental authority exclusive—Other recommendations considered. Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW 75.20.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fisheries, the department of wildlife, the state energy office, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fisheries, the department of wildlife, the energy office, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fisheries, the department of wildlife, the energy office, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs. [1987 c 506 § 95; 1987 c 505 § 81; 1980 c 87 § 46; 1979 ex.s. c 166 § 1.]

Reviser's note: This section was amended by 1987 c 505 § 81 and by 1987 c 506 § 95, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

90.03.250 Appropriation procedure—Application for permit—Temporary permit. Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such

appropriation, and shall not use or divert such waters until he has received a permit from the department as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the department: *Provided*, That a temporary permit may be granted upon a proper showing made to the department to be valid only during the pendency of such application for a permit unless sooner revoked by the department: *Provided, further*, That nothing in this chapter contained shall be deemed to affect RCW 90.40.010 through 90.40.080 except that the notice and certificate therein provided for in RCW 90.40.030 shall be addressed to the department, and the department shall exercise the powers and perform the duties prescribed by RCW 90.40.030. [1987 c 109 § 83; 1917 c 117 § 27; RRS § 7378. Formerly RCW 90.20.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Schedule of fees: RCW 90.03.470.

90.03.260 Appropriation procedure—Application—Contents. Each application for permit to appropriate water shall set forth the name and post office address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use. If for agricultural purposes, it shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for construction of a reservoir, it shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirement of the municipality. If for mining purposes, it shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the department, and such accompanying data shall be considered as a part of the application. [1987 c 109 § 84; 1917 c 117 § 28; RRS § 7379. Formerly RCW 90.20.020.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Height of dams on tributaries of Columbia river: RCW 75.20.110.

90.03.270 Appropriation procedure—Record of application. Upon receipt of an application it shall be the duty of the department to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the department shall be filed with the department within such reasonable time as it shall require. [1987 c 109 § 85; 1917 c 117 § 29; RRS § 7380. Formerly RCW 90.20.030.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.280 Appropriation procedure—Notice. Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by him in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as he may direct, once a week for two consecutive weeks. Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fisheries and the *director of game. [1987 c 109 § 66; 1953 c 275 § 1; 1939 c 127 § 1; 1925 ex.s. c 161 § 1; 1917 c 117 § 30; RRS § 7381. Formerly RCW 90.20.040.]

***Reviser's note:** References to the "director of game" mean the "director of wildlife." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.290 Appropriation procedure—Department to investigate—Preliminary permit—Findings and action on application. When an application complying with the provisions of this chapter and with the rules and regulations of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public. If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and

progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit. The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: *Provided*, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470: *Provided further*, That in the event a permit is issued by the department upon any application, it shall be its duty to notify both the director of fisheries and the *director of game of such issuance. [1987 c 109 § 86; 1947 c 133 § 1; 1939 c 127 § 2; 1929 c 122 § 4; 1917 c 117 § 31; Rem. Supp. 1947 § 7382. Formerly RCW 90.20.050 and 90.20.060.]

***Reviser's note:** References to the "director of game" mean the "director of wildlife." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Inapplicability of section to RCW 90.03.290: RCW 90.14.200.

90.03.300 Appropriation procedure—Diversion of water for out-of-state use—Reciprocity. No permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other state or nation, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state of Washington, the permit shall issue as in other cases: *Provided, however,* That the department may in its discretion, decline to issue a permit where the point of diversion described in the application is within the state of Washington but the place of beneficial use in some other state or nation, unless under the laws of such state or nation water may be lawfully diverted within such state or nation for beneficial use in the state of Washington. [1987 c 109 § 87; 1921 c 103 § 3; RRS § 7383. Formerly RCW 90.20.070.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.310 Appropriation procedure—Assignability of permit or application. Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record with the department. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall be valid or binding unless the written consent of the department is first obtained thereto, and unless such assignment is filed for record with the department. [1987 c 109 § 88; 1917 c 117 § 32; RRS § 7384. Prior: 1891 c 142 § 6. Formerly RCW 90.20.080.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.320 Appropriation procedure—Construction work. Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the department, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the department. The department, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected: and, for

good cause shown, it shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. If the terms of the permit or extension thereof, are not complied with the department shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause be not shown, said permit shall be canceled. [1987 c 109 § 67; 1917 c 117 § 33; RRS § 7385. Formerly RCW 90.20.090.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.330 Appropriation procedure—Water right certificate. Upon a showing satisfactory to the department that any appropriation has been perfected in accordance with the provisions of this chapter, it shall be the duty of the department to issue to the applicant a certificate stating such facts in a form to be prescribed by him, and such certificate shall thereupon be recorded with the department. Any original water right certificate issued, as provided by this chapter, shall be recorded with the department and thereafter, at the expense of the party receiving the same, be by the department transmitted to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof. [1987 c 109 § 89; 1929 c 122 § 5; 1917 c 117 § 34; RRS § 7386. Formerly RCW 90.20.100.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.340 Appropriation procedure—Effective date of water right. The right acquired by appropriation shall relate back to the date of filing of the original application with the department. [1987 c 109 § 90; 1917 c 117 § 35; RRS § 7387. Formerly RCW 90.20.110.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.345 Establishment of reservations of water for certain purposes and minimum flows or levels as constituting appropriations with priority dates. The establishment of reservations of water for agriculture, hydroelectric energy, municipal, industrial, and other beneficial uses under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010 or 90.54.040 shall constitute appropriations within the meaning of this chapter with priority dates as of the effective dates of their establishment. Whenever an application for a permit to make beneficial use of public waters embodied in a reservation, established after the effective date of this act, is filed with the department of ecology after the effective date of such reservation, the priority date for a permit issued pursuant to an approval by the department

of ecology of the application shall be the effective date of the reservation. [1979 ex.s. c 216 § 7.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.03.350 Construction or modification of storage dam—Plans and specifications. Any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he is requested to do so by the department. [1987 c 109 § 91; 1955 c 362 § 1; 1939 c 107 § 1; 1917 c 117 § 36; RRS § 7388. Formerly RCW 90.28.060.] [1954 SLC-RO-18.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Height of dams on tributaries of Columbia river: RCW 75.20.110.

90.03.360 Controlling works and measuring devices. The owner or owners of any ditch or canal shall maintain, to the satisfaction of the department, substantial controlling works, and a measuring device at the point where the water is diverted, and these shall be so constructed as to permit of accurate measurement and practical regulation of the flow of water diverted into said ditch or canal. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir. [1987 c 109 § 92; 1917 c 117 § 37; RRS § 7389. Formerly RCW 90.28.070.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.370 Reservoir permits—Secondary permits. All applications for reservoir permits shall be subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also

file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit. [1987 c 109 § 93; 1917 c 117 § 38; RRS § 7390. Formerly RCW 90.28.080.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.380 Right to water attaches to land—Transfer or change in point of diversion. The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: *Provided, however,* That said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and said application shall not be granted until notice of said application shall be published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. [1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.390 Temporary changes—Rotation of use. RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights,

but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the department. Nor shall RCW 90.03.380 be construed to prevent rotation in the use of water for bringing about a more economical use of the available supply. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or department. [1987 c 109 § 95; 1929 c 122 § 7; RRS § 7391a. Formerly RCW 90.28.100.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.400 Crimes against water code—Unauthorized use of water. The unauthorized use of water to which another person is entitled or the wilful or negligent waste of water to the detriment of another, shall be a misdemeanor. The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it. It shall also be a misdemeanor to use, store or divert any water until after the issuance of permit to appropriate such water. [1917 c 117 § 40; RRS § 7392. Formerly RCW 90.32.010.]

Punishment of misdemeanor when not fixed by statute: RCW 9.92.030.

90.03.410 Crimes against water code—Interference with works—Wrongful use of water—Property destruction—Penalty. (1) Any person or persons who shall wilfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume or other structure or appliance for the diversion, carriage, storage, apportionment or measurement of water for irrigation, reclamation, power or other beneficial uses, or who shall wilfully use or conduct water into or through his ditch, which has been lawfully denied him by the water master or other competent authority, or shall wilfully injure or destroy any telegraph, telephone or electric transmission line, or any other property owned, occupied or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(2) Any person or persons who shall wilfully or unlawfully take or use water, or conduct the same into his ditch or to his land, or land occupied by him, and for such purpose shall cut, dig, break down or open any headgate, bank, embankment, canal or reservoir, flume or conduit, or interfere with, injure or destroy any weir, measuring box or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any

water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it. [1971 ex.s. c 152 § 8; 1921 c 103 § 2; 1917 c 117 § 41; RRS § 7393. Formerly RCW 90.32.020.]

***Reviser's note:** RCW 9.61.070 was repealed; see Table of Disposition of Former RCW Sections.

90.03.420 Crimes against water code—Obstruction of right of way. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto or trespass thereon. [1917 c 117 § 42; RRS § 7394. Formerly RCW 90.32.030.]

90.03.430 Partnership ditches—Action for reimbursement for work done. In all cases where irrigating ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense or value of such work or labor so performed: *Provided*, That no improvement involving an expenditure in excess of one hundred dollars shall be made without the written approval of the department having first been obtained. [1987 c 109 § 96; 1919 c 71 § 3; RRS § 7395. Formerly RCW 90.28.110.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.440 Partnership ditches—Procedure for division of water between joint owners. When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the department, in writing, setting forth such fact and

giving such information as shall enable the department to estimate the probable expense of such service, asking the department to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The department shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, the department shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the department shall be entitled to recover in any court of competent jurisdiction from his co-owners their proportionate share of the expense. [1987 c 109 § 97; 1919 c 71 § 4; RRS § 7396. Formerly RCW 90.28.130.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.450 Partnership ditches—Lien for labor performed. Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in RCW 90.03.430 within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of mechanics' and builders' liens. [1919 c 71 § 5; RRS § 7397. Formerly RCW 90.28.120.]

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

90.03.460 Inchoate rights not affected. Nothing in this chapter contained shall operate to effect an impairment of any inchoate right to divert and use water while the application of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question. [1917 c 117 § 43; RRS § 7398. Formerly RCW 90.28.140.]

90.03.470 Schedule of fees. The following fees shall be collected by the department in advance:

(1) For the examination of an application for permit to appropriate water or on application to change point of diversion, withdrawal, purpose or place of use, a minimum of ten dollars, to be paid with the application. For each second foot between one and five hundred second feet, two dollars per second foot; for each second foot between five hundred and two thousand second feet, fifty cents per second foot; and for each second foot in excess thereof, twenty cents per second foot. For each acre foot of storage up to and including one hundred thousand acre feet, one cent per acre foot, and for each acre foot in excess thereof, one-fifth cent per acre foot. The ten dollar fee payable with the application shall be a credit to that amount whenever the fee for direct diversion or storage totals more than ten dollars under the above schedule and in such case the further fee due shall be the total computed amount less ten dollars.

Within five days from receipt of an application the department shall notify the applicant by registered mail of any additional fees due under the above schedule and any additional fees shall be paid to and received by the department within thirty days from the date of filing the application, or the application shall be rejected.

(2) For filing and recording a permit to appropriate water for irrigation purposes, forty cents per acre for each acre to be irrigated up to and including one hundred acres, and twenty cents per acre for each acre in excess of one hundred acres up to and including one thousand acres, and ten cents for each acre in excess of one thousand acres; and also twenty cents for each theoretical horsepower up to and including one thousand horsepower, and four cents for each theoretical horsepower in excess of one thousand horsepower, but in no instance shall the minimum fee for filing and recording a permit to appropriate water be less than five dollars. For all other beneficial purposes the fee shall be twice the amount of the examination fee except that for individual household and domestic use, which may include water for irrigation of a family garden, the fee shall be five dollars.

(3) For filing and recording any other water right instrument, four dollars for the first hundred words and forty cents for each additional hundred words or fraction thereof.

(4) For making a copy of any document recorded or filed in his office, forty cents for each hundred words or fraction thereof, but when the amount exceeds twenty dollars, only the actual cost in excess of that amount shall be charged.

(5) For certifying to copies, documents, records or maps, two dollars for each certification.

(6) For blueprint copies of a map or drawing, or, for such other work of a similar nature as may be required of the department, at actual cost of the work.

(7) For granting each extension of time for beginning construction work under a permit to appropriate water, an amount equal to one-half of the filing and recording fee, except that the minimum fee shall be not less than five dollars for each year that an extension is granted, and for granting an extension of time for completion of construction work or for completing application of water

to a beneficial use, five dollars for each year that an extension is granted.

(8) For the inspection of any hydraulic works to insure safety to life and property, the actual cost of the inspection, including the expense incident thereto.

(9) For the examination of plans and specifications as to safety of controlling works for storage of ten acre feet or more of water, a minimum fee of ten dollars, or the actual cost.

(10) For recording an assignment either of a permit to appropriate water or of an application for such a permit, a fee of five dollars.

(11) For preparing and issuing all water right certificates, five dollars.

(12) For filing and recording a protest against granting any application, two dollars. [1987 c 109 § 98; 1965 ex.s. c 160 § 1; 1951 c 57 § 5; 1929 c 122 § 8; 1925 ex.s. c 161 § 2; 1917 c 117 § 44; RRS § 7399. Formerly RCW 90.04.040.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.471 Disposition of fees. All fees, collections and revenues derived under RCW 90.03.470 or by virtue of RCW 90.03.180, shall be used exclusively for the purpose of carrying out the work and performing the functions of the division of water resources of the department. [1987 c 109 § 99; 1925 ex.s. c 161 § 3; RRS § 7399-1.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.500 Storm water control facilities—Imposition of rates and charges—Legislative findings. The legislature finds that increasing the surface water or storm water accumulation on or flow over real property, beyond that which naturally occurs on the real property, may cause severe damage to the real property and limit the gainful use or enjoyment of the real property, resulting in a tort, nuisance, or taking. The damage can arise from activities increasing the point or nonpoint flow of surface water or storm water over the real property, or altering or interrupting the natural drainage from the real property. The legislature finds that it is in the public interest to permit the construction and operation of public improvements to lessen the damage. The legislature further finds that it is in the public interest to provide for the equitable imposition of special assessments, rates, and charges to fund such improvements. This shall include the imposition of special assessments, rates, and charges on real property to fund that reasonable portion of the public improvements that alleviate the damage arising from activities that are the proximate cause of the damage on other real property. Except as otherwise provided in RCW 90.03.525, these special assessments, rates, and charges may be imposed on any publicly-owned, including state-owned, real property that causes such damage. [1986 c 278 § 62; 1983 c 315 § 8.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 315 § 26.]

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Public property subject to rates and charges for storm water control facilities: RCW 35.67.025, 35.92.021, 36.89.085, 36.94.145, and 56.08.012.

90.03.510 Storm water control facilities—Imposition of rates and charges—Credit for other improvements. Whenever a county, city, town, sewer district, or flood control zone district imposes rates or charges to fund storm water control facilities or improvements and the operation and maintenance of such facilities or improvements under RCW 35.67.020, 35.92.020, 36.89.080, 36.94.140, 56.08.010, or 56.16.090, it may provide a credit for the value of storm water control facilities or improvements that a person or entity has installed or located that mitigate or lessen the impact of storm water which otherwise would occur. [1986 c 278 § 63; 1983 c 315 § 9.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

90.03.520 Storm water control facilities—Imposition of rates and charges—Definitions. The definitions set forth in this section apply to RCW 90.03.525 and 35.67.025.

(1) "State highway right of way" means the right of way for a state highway. The phrase includes the right of way of a state limited-access highway inside or outside a city or town but does not include city or town streets forming a part of the route of state highways that are not limited-access highways. The term does not include state property under the jurisdiction of the department of transportation that is outside the right of way lines of a state highway.

(2) "Storm water control facility" means any facility, improvement, development, property, or interest therein, made, constructed, or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood, or surplus waters.

(3) "Rate" means the dollar amount charged per unit of surface area of a parcel of real property based upon factors established by the local government utility.

(4) "Comparable real property" means real property equal to the state highway right of way or a section of state highway right of way in terms of the factors considered by the local government utility in establishing rates. [1986 c 278 § 53.]

Severability—1986 c 278: See note following RCW 36.01.010.

Public property subject to rates and charges for storm water control facilities: RCW 35.67.025.

90.03.525 Storm water control facilities—Imposition of rates and charges with respect to state highway rights of way. The rate charged by a local government utility to the department of transportation with respect to state highway right of way or any section of state highway right of way for the construction, operation,

and maintenance of storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 56.08, and 86.15 RCW, shall be thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right of way or any section of state highway right of way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right of way within the same jurisdiction. The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights of way. The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the extent and adequacy of storm water control facilities constructed by the department and upon the actual benefits to state highway rights of way from the storm water control facilities constructed by the local government utility. If a different rate is agreed to, a report so stating shall be submitted to the legislative transportation committee. If the local government utility and the department of transportation cannot agree upon the proper rate, and after a report has been submitted to the legislative transportation committee and after ninety days from submission of such report, either may commence an action in the superior court for the county in which the state highway right of way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights of way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights of way shall be deemed an actual benefit to the state highway rights of way. The rate for sections of state highway right of way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property, but shall in no event exceed the rate charged for comparable city street or county road right of way within the same jurisdiction. [1986 c 278 § 54.]

Severability—1986 c 278: See note following RCW 36.01.010.

90.03.600 Civil penalties. The power is granted to the department of ecology to levy civil penalties of up to one hundred dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same. [1987 c 109 § 157; 1977 ex.s. c 1 § 8. Formerly RCW 43.83B.335.]

(1987 Ed.)

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

90.03.610 Exemption—Hazardous waste remedial action. A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.105B RCW is exempt from the procedural and substantive requirements of this chapter. [1987 3rd ex.s. c 2 § 30.]

Severability—**Continuation of act**—**Section captions**—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—**Savings**—**Retroactivity**—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

Chapter 90.08 STREAM PATROLMEN

Sections

90.08.040	Stream patrolmen—Appointment—Powers.
90.08.050	Stream patrolmen—Compensation, travel expenses.
90.08.060	Stream patrolmen—Users to share in payment of compensation.
90.08.070	Right of county to sue user for unpaid share of expenses.

90.08.040 Stream patrolmen—Appointment—Powers. Where water rights of a stream have been adjudicated a stream patrolman shall be appointed by the director of the department of ecology upon application of water users having adjudicated water rights in each particular water resource making a reasonable showing of the necessity therefor, which application shall have been approved by the district water master if one has been appointed, at such time, for such stream, and for such periods of service as local conditions may indicate to be necessary to provide the most practical supervision and to secure to water users and owners the best protection in their rights.

The stream patrolman shall have the same powers as a water master appointed under RCW 90.03.060, but his district shall be confined to the regulation of waters of a designated stream or streams. Such patrolman shall be under the supervision of the director or his designated representative. He shall also enforce such special rules and regulations as the director may prescribe from time to time. [1977 c 22 § 1; 1925 ex.s. c 162 § 1; RRS § 7351-1.]

Water masters

appointment, compensation: RCW 90.03.060.

duties: RCW 90.03.070.

power of arrest: RCW 90.03.090.

90.08.050 Stream patrolmen—Compensation, travel expenses. Each stream patrolman shall receive a wage per day for each day actually employed in the duties of his office, or if employed by the month, he shall receive a salary per month, which wage or salary shall be fixed in the manner provided by law for the fixing of the salaries or compensation of other state officers or employees, plus travel expenses in accordance with

RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, to be paid by the county in which the work is performed. In case the service extends over more than one county, each county shall pay its equitable part of such wage to be apportioned by the director. He shall be reimbursed for actual necessary expenses when absent from his designated headquarters in the performance of his duties, such expense to be paid by the county in which he renders the service. The accounts of the stream patrolman shall be audited and certified by the director and the county auditor shall issue a warrant therefor upon the current expense fund. [1977 c 22 § 2; 1975-'76 2nd ex.s. c 34 § 180; 1947 c 123 § 1; 1925 ex.s. c 162 § 2; Rem. Supp. 1947 § 7351-2.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Public officers, salaries and fees: Chapter 42.16 RCW.

State government, salaries and expenses: Chapter 43.03 RCW.

90.08.060 Stream patrolmen—Users to share in payment of compensation. The salary of the stream patrolman shall be borne by the water users receiving the benefits and shall be paid to the county or counties in the following manner:

The county or counties may assess each water user for his proportionate share of the total stream patrolman expense in the same ratio that the amount of water diverted by him bears to the total amount diverted from the stream during each season, on an annual basis, to recover all such county expenses. The stream patrolman shall keep an accurate record of the amount of water diverted by each water user coming under his supervision. On the first of each month the stream patrolman shall present his record of water diversion to the county or counties for the preceding month. Where the water users are organized into an irrigation district or water users' association, such organization may enter into an agreement with the county or counties for direct payment to the stream patrolman in order to minimize administrative costs. [1977 c 22 § 3; 1925 ex.s. c 162 § 3; RRS § 7351-3.]

Irrigation districts generally: Chapter 87.03 RCW.

90.08.070 Right of county to sue user for unpaid share of expenses. Upon failure of any water user to pay his proportionate share of the expense referred to in RCW 90.08.050 and 90.08.060, the county or counties shall be entitled to sue for and recover any such unpaid portion in any court of competent jurisdiction. [1977 c 22 § 4; 1925 ex.s. c 162 § 4; RRS § 7351-4.]

Chapter 90.14

WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

Sections

90.14.010	Purpose.
90.14.020	Legislative declaration.
90.14.031	Definitions.

90.14.041	Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.
90.14.043	Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions. Existing water rights not impaired.
90.14.044	Statement of claim—Contents—Short form.
90.14.051	Statement of claim—Filing procedure—Processing of claim—Fee.
90.14.061	Statement of claim—Amendment—Review of department of ecology's determination.
90.14.065	Failure to file claim waives and relinquishes right.
90.14.071	Filing of claim not deemed adjudication of right—Prima facie evidence.
90.14.081	Definitions—Water rights notice—Form.
90.14.091	Notice of chapter provisions—How given—Requirements.
90.14.101	Water rights claims registry.
90.14.111	Penalty for overstating claim.
90.14.121	Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal.
90.14.130	"Sufficient cause" for nonuse defined—Rights exempted.
90.14.140	Rights arising from permit to withdraw public waters not affected—Extensions.
90.14.150	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.
90.14.160	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.
90.14.170	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.
90.14.180	Water resources decisions—Appeals—Attorneys' fees.
90.14.190	Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed "contested cases"—Application of RCW sections to specific proceedings.
90.14.200	Chapter applies to all rights to withdraw ground waters.
90.14.210	No rights to be acquired by prescription or adverse use.
90.14.220	Rules and regulations.
90.14.230	Effective date—1967 c 233.
90.14.900	Severability—1967 c 233.
90.14.910	

90.14.010 Purpose. The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use. [1967 c 233 § 1.]

90.14.020 Legislative declaration. The legislature finds that:

(1) Extensive uncertainty exists regarding the volume of private claims to water in the state;

(2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this chapter will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this chapter to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land. [1967 c 233 § 2.]

90.14.031 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as used in RCW 90.14.031 through 90.14.121 shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation. [1969 ex.s. c 284 § 12.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.041 Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions. All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as hereinafter provided in this section, shall file with the department of water resources not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. This section shall not apply to any water rights which are based on the authority of a permit or certificate issued by the department of water resources or one of its predecessors. [1969 ex.s. c 284 § 13.]

Reviser's note: Powers, duties, and functions of the department of water resources transferred to the department of ecology: See RCW 43.21A.060, and note following.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.043 Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions. (1) Notwithstanding any time restrictions imposed by the provisions of chapter 90.14 RCW, a person may file a claim pursuant to RCW 90.14.041 if such person obtains a certification from the pollution control hearings board as provided in this section.

(2) A certification shall be issued by the pollution control hearings board if, upon petition to the board, it is shown to the satisfaction of the board that:

(a) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) in the case of surface water beginning not later than June 7, 1917, and in the case of ground water beginning not later than June 7, 1945, or

(b) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) from the date of entry of a court decree confirming a water right and any failure to register a claim resulted from a reasonable misinterpretation of the requirements as they related to such court decreed rights.

(3) The board shall have jurisdiction to accept petitions for certification from any person through September 1, 1985, and not thereafter.

(4) A petition for certification shall include complete information on the claim pursuant to RCW 90.14.051 (1) through (8), and any such information as the board may require.

(5) The department of ecology is directed to accept for filing any claim certified by the board as provided in subsection (2) of this section. The department of ecology, upon request of the board, may provide assistance to the board pertinent to any certification petition.

(6) A certification by the pollution control hearings board or a filing with the department of ecology of a claim under this section shall not constitute a determination or confirmation that a water right exists.

(7) The provisions of RCW 90.14.071 shall have no applicability to certified claims filed pursuant to this section.

(8) This section shall have no applicability to ground waters resulting from the operations of reclamation projects. [1985 c 435 § 1; 1979 ex.s. c 216 § 4.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.14.044 Existing water rights not impaired. The provisions of *this 1985 amendatory act authorizing the acceptance of a petition for certification filed during the period beginning on July 28, 1985, and ending on midnight, September 1, 1985, shall not affect or impair in any respect whatsoever any water right existing prior to July 28, 1985. [1985 c 435 § 2.]

***Reviser's note:** "This 1985 amendatory act" consists of the enactment of RCW 90.14.044 and the 1985 c 435 amendment to RCW 90.14.043.

90.14.051 Statement of claim—Contents—Short form. The statement of claim for each right shall include substantially the following:

(1) The name and mailing address of the claimant.

(2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.

(3) The quantities of water and times of use claimed.

(4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.

(5) The purpose of use, including, if for irrigation, the number of acres irrigated.

(6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).

(7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.

(8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

Except, however, that any claim for diversion or withdrawal of surface or ground water for those uses described in the exemption from the permit requirements of RCW 90.44.050 may be filed on a short form to be provided by the department. Such short form shall only require inclusion of sufficient data to identify the claimant, source of water, purpose of use and legal description of the land upon which the water is used: *Provided*, That the provisions of RCW 90.14.081 pertaining to evidentiary value of filed claims shall not apply to claims submitted in short form: *And provided further*, That claimants for such minimal uses may, at their option, file statements of claim on the standard form used by all other claimants. [1973 1st ex.s. c 113 § 1; 1969 ex.s. c 284 § 14.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.061 Statement of claim—Filing procedure—Processing of claim—Fee. Filing of a statement of a claim shall take place and be completed upon receipt by the department of water resources, at its office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW 90.14.041, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW 90.14.081, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of water resources unless accompanied by a two dollar filing fee. [1969 ex.s. c 284 § 15.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.065 Statement of claim—Amendment—Review of department of ecology's determination. Any person or entity, or successor to such person or entity, having a statement of claim on file with the water rights claims registry on April 20, 1987, may submit to the department of ecology for filing, an amendment to such a statement of claim if the submitted amendment is based on:

(1) An error in estimation of the quantity of the applicant's water claim prescribed in RCW 90.14.051 if the applicant provides reasons for the failure to claim such right in the original claim;

(2) A change in circumstances not foreseeable at the time the original claim was filed, if such change in circumstances relates only to the manner of transportation or diversion of the water and not to the use or quantity of such water; or

(3) The amendment is ministerial in nature.

The department shall accept any such submission and file the same in the registry unless the department by written determination concludes that the requirements of subsection (1), (2), or (3) of this section have not been satisfied. Any person aggrieved by a determination of the department may obtain a review thereof by filing a petition for review with the pollution control hearings board within thirty days of the date of the determination by the department. The provisions of RCW 90.14.081 shall apply to any amendment filed under this section. [1987 c 93 § 1.]

90.14.071 Failure to file claim waives and relinquishes right. Any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of claim as provided in RCW 90.14.041, 90.14.051 and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right. [1969 ex.s. c 284 § 16.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.081 Filing of claim not deemed adjudication of right—Prima facie evidence. The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to RCW 90.14.061 shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of the claimed water right. [1969 ex.s. c 284 § 17.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.091 Definitions—Water rights notice—Form. For the purpose of RCW 90.14.031 through 90.14.121 the following words and phrases shall have the following meanings:

(1) "Statement of taxes due" means the statement required under RCW 84.56.050.

(2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the department of water resources or one of its predecessors, must be registered with the department of water resources, Olympia, Washington not later than June 30, 1974. **FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT.** For further information contact the Department of Water Resources, Olympia, Washington, for a copy of the act and an explanation thereof. [1969 ex.s. c 284 § 18.]

Reviser's note: Powers, duties, and functions of the department of water resources transferred to the department of ecology; see RCW 43.21A.060, and note following.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.101 Notice of chapter provisions—How given—Requirements. To insure that all persons referred to in RCW 90.14.031 and 90.14.041 are notified of the registration provisions of this chapter, the department of water resources is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a

declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of the department of water resources before the fifteenth day of January, 1972. In the implementation of this subsection the department of water resources shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973 and 1974.

The director of the department may also in his discretion give notice in any other manner which will carry out the purposes of this section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, RCW 90.14.041, 90.14.051 and 90.14.071 shall be set forth and quoted in full. [1969 ex.s. c 284 § 19.]

Reviser's note: (1) "This 1969 amendatory act" has been changed to "this chapter" in the first paragraph. "This 1969 amendatory act" [1969 ex.s. c 284] consists of RCW 90.48.290, former RCW 90.48.295, since repealed, RCW 90.22.010 through 90.22.040, 90.14.031 through 90.14.121, 43.27A.190 through 43.27A.220, 43.27A.075, and repeals RCW 43.21.145 and 90.14.030 through 90.14.120.

(2) Powers, duties, and functions of the department of water resources transferred to the department of ecology; see RCW 43.21A.060, and note following.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.111 Water rights claims registry. The department of water resources is directed to establish a registry entitled the "Water Rights Claims Registry". All claims set forth pursuant to RCW 90.14.041, 90.14.051 and 90.14.061 shall be filed in the registry alphabetically and consecutively by control number, and by such other manner as deemed appropriate by the department. [1969 ex.s. c 284 § 20.]

Reviser's note: Powers, duties and functions of the department of water resources transferred to the department of ecology; see RCW 43.21A.060, and note following.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.121 Penalty for overstating claim. The filing of a statement of claim pursuant to RCW 90.14.061 which knowingly provides for an overstatement of a right either in quantities of water or times of use claimed shall constitute a misdemeanor punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or both. [1969 ex.s. c 284 § 21.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.130 Reversion of rights to state due to non-use—Notice by order—Relinquishment determinations—Appeal. When it appears to the department of ecology that a person entitled to the use of water has not

beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall notify such person by order: *Provided*, That where a company, association, district, or the United States has filed a blanket claim under the provisions of *RCW 90.14.060 for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW 43.21B.310. The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any. [1987 c 109 § 13; 1967 c 233 § 13.]

*Reviser's note: RCW 90.14.060 was repealed by 1969 ex.s. c 284 § 23, which act added new sections relating to the registration of claims for water rights as codified in this chapter.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Proceedings under this section deemed "contested cases"—Application of RCW sections to specific proceedings: RCW 90.14.200.

90.14.140 "Sufficient cause" for nonuse defined—Rights exempted. (1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (a) Drought, or other unavailability of water;
- (b) Active service in the armed forces of the United States during military crisis;
- (c) Nonvoluntary service in the armed forces of the United States;
- (d) The operation of legal proceedings;
- (e) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

- (a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW, or

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply, or

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later, or

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW, or

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030 as now or hereafter amended. [1987 c 125 § 1; 1967 c 233 § 14.]

Effective date—1967 c 233: See RCW 90.14.900.

90.14.150 Rights arising from permit to withdraw public waters not affected—Extensions. Nothing in this chapter shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the department of ecology shall grant extensions of time to the holder of a preliminary permit only as provided by RCW 90.03.290. [1987 c 109 § 100; 1967 c 233 § 15.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.14.160 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication. Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after the effective date of this act, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. [1981 c 291 § 1; 1979 ex.s. c 216 § 5; 1967 c 233 § 16.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

Effective date—1967 c 233: See RCW 90.14.900.

Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed "contested cases"—Application of RCW sections to specific proceedings: RCW 90.14.200.

90.14.170 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse. Any person entitled to divert or withdraw waters of the state by virtue of his ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any

part of said right to withdraw or divert said water for any period of five successive years after the effective date of this act shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250. [1967 c 233 § 17.]

Effective date—1967 c 233: See RCW 90.14.900.

Availability for other uses qualified: RCW 90.14.160.

Implementation and enforcement of chapter—Application of RCW sections to specific proceedings: RCW 90.14.200.

90.14.180 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation. Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1987 c 109 § 101; 1967 c 233 § 18.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Availability for other uses qualified: RCW 90.14.160.

Implementation and enforcement of chapter—Application of RCW sections to specific proceedings: RCW 90.14.200.

90.14.190 Water resources decisions—Appeals—Attorneys' fees. Any person feeling aggrieved by any decision of the department of ecology may have the same reviewed pursuant to RCW 43.21B.310. In any such review, the findings of fact as set forth in the report of the department of ecology shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. If the hearings board affirms the decision of the department, a party seeks review in superior court of that hearings board decision pursuant to chapter 34.04 RCW, and the court determines that the party was injured by an arbitrary, capricious, or erroneous order of the department, the court may award reasonable attorneys' fees. [1987 c 109 § 14; 1967 c 233 § 19.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.14.200 Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed "contested cases"—Application of RCW sections to specific proceedings. (1) All matters relating to the implementation and enforcement of this chapter by the department of ecology shall be carried out in accordance with chapter 34.04 RCW as it now exists or hereafter

shall be amended except where the provisions of this chapter expressly conflict herewith. Proceedings held pursuant to RCW 90.14.130 hereof are "contested cases" within the meaning of chapter 34.04 RCW. Final decisions of the department of ecology in these proceedings are subject to review in accordance with chapter 43.21B RCW.

(2) RCW 90.14.130 provides nonexclusive procedures for determining a relinquishment of water rights under RCW 90.14.160, 90.14.170, and 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in, among other proceedings, general adjudication proceedings initiated under RCW 90.03.110 or 90.44.220: *Provided*, That nothing herein shall apply to litigation involving determinations of the department of ecology under RCW 90.03.290 relating to the impairment of existing rights. [1979 ex.s. c 216 § 6; 1967 c 233 § 20.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.14.210 Chapter applies to all rights to withdraw ground waters. The provisions of this chapter shall apply to all rights to withdraw ground waters of the state, whether authorized by chapter 90.44 RCW or otherwise. [1967 c 233 § 21.]

90.14.220 No rights to be acquired by prescription or adverse use. No rights to the use of surface or ground waters of the state affecting either appropriated or unappropriated waters thereof may be acquired by prescription or adverse use. [1967 c 233 § 22.]

90.14.230 Rules and regulations. The department of ecology is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter. [1987 c 109 § 102; 1967 c 233 § 23.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.14.900 Effective date—1967 c 233. The effective date of this act is July 1, 1967. [1967 c 233 § 25.]

90.14.910 Severability—1967 c 233. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the act can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable. This act shall be liberally construed to effectuate its purpose. [1967 c 233 § 26.]

Chapter 90.16

APPROPRIATION OF WATER FOR PUBLIC AND INDUSTRIAL PURPOSES

Sections

90.16.010	Appropriation by certain water companies.
90.16.020	Appropriation for industrial purposes.
90.16.025	Appropriation for industrial purposes—Procedure.
90.16.030	Right of eminent domain by water power companies.
90.16.040	Right of eminent domain by water power companies—Right of entry.

- 90.16.045 Right of eminent domain by water power companies—Procedure.
 90.16.050 Schedule of fees for claimants of water power.
 90.16.060 Schedule of fees for claimants of water power—Statement of claim—Penalties—Excessive claim—Abandonment.
 90.16.090 Disposition of fees.
 90.16.100 Appropriation of lands by corporations conveying water.
 90.16.110 Water for use outside state.
 90.16.120 Water for use outside state—Reciprocity.

Use of waters for irrigation, mining, manufacturing, deemed a public use: State Constitution Art. 21.

90.16.010 Appropriation by certain water companies.

Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree shall so far as the same be applicable be as prescribed in chapter 187: *Provided*, That nothing therein contained, shall be so construed, as to authorize the appropriation of water belonging to any person, unless the owner thereof shall refuse to supply said town or city with water after being requested so to do by the town board or city council. [1883 p 45 § 1, subd. 8; Code 1881 § 2448; 1873 p 408 § 28; 1869 p 340 § 30; RRS § 11570.]

Reviser's note: The language "for the purposes specified in the preceding section" refers to Code 1881 § 2447 (repealed by 1939 c 143 § 19) which stated in part: ". . . for the purpose of supplying any cities or towns in this territory, or the inhabitants thereof with pure and fresh water."

The language "chapter 187" refers to chapter 187 of the Code of 1881 the existing sections of which chapter are codified in chapter 81.36 RCW and RCW 90.16.100; the remaining sections thereof have been repealed.

Validating—1881 Act: "All persons who have organized themselves as a corporation under the provisions of this chapter for purposes other than those enumerated in section 2421, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in section 2421." [Code 1881 § 2445.] The language "this chapter" refers to chapter 185, Code of 1881 which embodied the territorial laws relating to the formation of corporations; current provisions relating thereto are codified in Titles 23 and 24 RCW. The language "section 2421" refers to Code 1881 § 2421 which set forth the purposes for which a corporation might then be formed. General purposes for which a corporation may be formed under existing law are codified in Title 23A RCW; see also Table of Prior Laws following Title 23 RCW digest.

90.16.020 Appropriation for industrial purposes. Any person or persons, or company now incorporated, or that may hereafter become incorporated under the laws of this state, for the purpose of mining or manufacturing, shall have the right to purchase or appropriate and take possession of and divert from its natural channel, and use and hold the waters of any river, creek or stream in this state that may be required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams, canals, reservoirs, ditches, pipes, flumes and aqueducts, suitable and necessary for the controlling, directing and

running such waters to their mines or manufacturing establishments of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes: *Provided*, That no such appropriation or diversion of the waters of any such river, creek, or stream, from its natural channel; nor shall any such dam, canal, reservoir, ditch, pipe, flume or aqueduct, be constructed to the detriment of any person or persons, corporation or corporations, occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume or aqueduct, or of the owners of the lands, through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoirs, ditch, pipe, flume or aqueduct, may pass through or over, or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor. [Code 1881 Bagley's Supp. p 36 § 1; 1879 p 124 § 1; RRS § 11575.]

90.16.025 Appropriation for industrial purposes—Procedure. The mode of proceeding to appropriate, take possession of and divert such waters and to build such dam, canal, ditch, reservoir, pipe, flume, or aqueduct, as prescribed in RCW 90.16.020, when the parties cannot agree upon the purchase thereof, shall be the same as prescribed in chapter four of an act to provide for the formation of corporations, approved November thirteenth, eighteen hundred and seventy-three, except that the amount of the benefits accruing to the residue of the property of the same individual or corporation, by reason of the use made of that taken, to be estimated by the parties assessing the damages, shall be deducted from the value of the property taken. [Code 1881 Bagley's Supp. p 37 § 2; 1879 p 125 § 2.]

90.16.030 Right of eminent domain by water power companies. The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power: *Provided, however*, That said right of eminent domain shall not be exercised in respect to any residence or business structure or structures. [1901 c 143 § 1; RRS § 11572. FORMER PART OF SECTION: 1901 c 143 § 3; RRS § 11574, now codified as RCW 90.16.045.]

90.16.040 Right of eminent domain by water power companies—Right of entry. Every corporation that is now or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, shall have the right to enter upon any land

between the termini of the proposed ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, for the purpose of examining, locating and surveying such ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, doing no unnecessary damage thereby. [1901 c 143 § 2; RRS § 11573.]

90.16.045 Right of eminent domain by water power companies—Procedure. Every such corporation shall have the right, subject to the proviso contained in RCW 90.16.030 to appropriate real estate or other property for a right-of-way for such ditches, flumes, pipe lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain. [1901 c 143 § 3; RRS § 11574. Formerly RCW 90.16.030, part.]

Eminent domain by corporations: Chapter 8.20 RCW.

90.16.050 Schedule of fees for claimants of water power. Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of July, 1929, and on or before the first day of January of each year thereafter pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of ten cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of two cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one cent per horsepower.

For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee above specified for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects. *Provided*, That upon the filing of statement, as hereinafter required, by the United States or the state claiming the right to the use of water to any extent for the generation of power, or any other claimant to the use of water for the generation of fifty horsepower, or less, shall be exempted from the payment of all fees hereinafter required; and *Provided further*, That any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, may upon the filing of a statement, showing the amount of power used for irrigation pumping, be exempted to

the extent of the power so used from the payment of the annual license fee herein provided for. [1929 c 105 § 1; RRS § 11575-1.]

90.16.060 Schedule of fees for claimants of water power—Statement of claim—Penalties—Excessive claim—Abandonment. The license fee herein required shall be paid in advance to the state department of conservation and shall be accompanied by written statement, showing the extent of the claim. Said statement shall set forth the name and address of the claimant, the name of the stream from which the water is appropriated or claimed for power development, a description of the forty acres or smallest legal subdivision in which the point of diversion and point of return are located, the date of the right as claimed, the maximum amount of water claimed, expressed in cubic feet per second of time, the total average fall utilized under such claim, the manner of developing power and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of such reservoir, its capacity in acre feet, and the stream from which it is filled and fed, should be given, also the date of the right as claimed for storage purposes.

Should any claimant fail or neglect to file such statement within the time specified, or fail or neglect to pay such fees within the time specified, the fees due and payable shall be at the schedule rates set out in RCW 90.16.050, increased twenty-five percent, and the state shall have preference lien therefor, with interest at the rate of ten percent per annum from the date of delinquency, upon the property of claimant used or necessary for use in the development of the right or claim, together with any improvements erected thereon for such development, and upon request from the director of conservation the attorney general shall proceed to foreclose the lien, and collect the amount due, as herein provided, in the same manner as other liens for general state and county taxes on real property are foreclosed.

The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in such claimant any right to the use of such excess water, nor shall the payment of the annual license fees, provided for herein, operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of such claim, or claims to water shall be conclusive evidence of abandonment by the claimant of all right to water for power purposes not covered by the claim, or claims, as filed; and the failure to file statement and pay the fees, as herein required, for any power site or claim of power rights on account of riparian ownership within two years after the passage of this act shall be conclusive evidence of abandonment. The amount of the theoretical horsepower upon which fees shall be paid under the provision of this act, shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second of time, by the average fall utilized, expressed in feet, and dividing the product by 8.8. [1929 c 105 § 2; RRS § 11575-2. Formerly RCW 90.16.060, 90.16.070 and 90.16.080.]

Reviser's note: (1) The language "passage of this act" refers to chapter 105, Laws of 1929 which passed the House February 21, passed the Senate March 2, approved by the Governor March 13, and became effective at midnight, June 12, 1929; it is codified as RCW 90.16.050, 90.16.060 and 90.16.090.

(2) The powers and duties of the "director of conservation" have devolved upon the "director of ecology", see RCW 43.21A.060.

Property taxes

certificates of delinquency: Chapter 84.64 RCW.

lien of taxes: Chapter 84.60 RCW.

90.16.090 Disposition of fees. All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation revolving fund and subject to legislative appropriation, be allocated and expended by the director of the department of conservation for investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys: *Provided*, That in any one biennium all said expenditures shall not exceed total receipts from said power license fees collected during said biennium: *And provided further*, That the portion of money allocated by said director to be expended in cooperation with the federal government shall be contingent upon the federal government making available equal amounts for such investigations and surveys. [1973 c 106 § 39; 1939 c 209 § 1; 1929 c 105 § 3; RRS § 11575-3.]

Reviser's note: (1) "Director of the department of conservation", see note (2) following RCW 90.16.060.

(2) The "reclamation revolving fund" has been abolished and monies transferred to the "reclamation revolving account", see RCW 43.79.330.

90.16.100 Appropriation of lands by corporations conveying water. All corporations, authorized to do business in the state, and who have been, or may hereafter be organized, for the purpose of erecting and maintaining flumes and aqueducts to convey water for consumption or for mining, irrigation, milling or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and instructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated. [Code 1881 § 2472; 1879 p 134 § 1; RRS § 11576.]

90.16.110 Water for use outside state. Whenever the use of water shall be necessary for domestic, manufacturing, irrigation, or in interstate transportation at or for any incorporated or unincorporated city, town, village or hamlet situated partly in Washington and partly in an adjoining state or where any city, town, village or hamlet is incorporated on one side of the state line and there are inhabitants living in adjacent and contiguous territory on the other side, it shall be lawful for any person, association or corporation to locate, appropriate, divert and deliver any of the unappropriated public waters of this state necessary for the use of such city, town, village or hamlet and the inhabitants thereof and those residing in and embracing such contiguous territory both within this

state and such adjoining state; and locations may be made and authority is hereby granted for such purpose the same as for any other appropriation within the state and a diversion and delivery for such purpose shall have the same force and effect as if made for use wholly within this state and any appropriation, diversion or use heretofore made for such purpose shall be deemed as valid and legal as if made for a use wholly within this state and priority thereof shall date from the appropriation and diversion the same as if it had been made for use wholly within this state. [1919 c 41 § 1; RRS § 11577.]

90.16.120 Water for use outside state—Reciprocity. The provisions of this act shall not apply to any territory or the inhabitants thereof situated or located in any adjoining state which does not by its laws, usages or legal regulations grant similar or reciprocal rights, privileges and opportunities to this state and its inhabitants and adjacent and contiguous territory whether incorporated or unincorporated as in *this act specified. [1919 c 41 § 2; RRS § 11578.]

***Reviser's note:** "This act" [1919 c 41], is codified in RCW 90.16.110 and 90.16.120.

Chapter 90.22

MINIMUM WATER FLOWS AND LEVELS

Sections

90.22.010	Establishment of minimum water flows or levels— Authorized—Purposes (as amended by 1987 c 109).
90.22.010	Establishment of minimum water flows or levels— Authorized—Purposes (as amended by 1987 c 506).
90.22.020	Establishment of minimum water flows or levels— Hearings—Notice—Rules.
90.22.030	Existing water and storage rights—Right to divert or store water.
90.22.040	Stockwatering requirements.
90.22.050	Civil penalties.

90.22.010 Establishment of minimum water flows or levels—Authorized—Purposes (as amended by 1987 c 109). The department of ~~((water resources))~~ ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ~~((water resources))~~ ecology shall, when requested by the department of fisheries or the game commission to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or ~~((by the water pollution control commission))~~ if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fisheries~~((;))~~ or game commission ~~((or water pollution control commission))~~ shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department ~~((of water resources))~~ in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder. [1987 c 109 § 103; 1969 ex.s. c 284 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.22.010 Establishment of minimum water flows or levels—Authorized—Purposes (as amended by 1987 c 506). The department of water resources may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of water resources shall, when requested by the department of fisheries or the (~~game commission~~) department of wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or by the water pollution control commission to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request. Any request submitted by the department of fisheries, (~~game commission~~) department of wildlife, or (~~water pollution control commission~~) department of ecology shall include a statement setting forth the need for establishing a minimum flow or level. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of (~~water resources~~) ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder. [1987 c 506 § 96; 1969 ex.s. c 284 § 3.]

Reviser's note: RCW 90.22.010 was amended twice during the 1987 legislative session, each without reference to the other.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.22.020 Establishment of minimum water flows or levels—Hearings—Notice—Rules. Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

- (1) The name of each stream, lake, or other water source under consideration;
- (2) The place and time of the hearing;
- (3) A statement that any person, including any private citizen or public official, may present his views either orally or in writing.

Notice of the hearing shall also be served upon the administrators of the departments of fisheries, social and health services, natural resources, wildlife, and transportation. [1987 c 506 § 97; 1985 c 196 § 1; 1984 c 7 § 384; 1969 ex.s. c 284 § 4.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

(1987 Ed.)

90.22.030 Existing water and storage rights—Right to divert or store water. The establishment of levels and flows pursuant to RCW 90.22.010 shall in no way affect existing water and storage rights and the use thereof, including but not limited to rights relating to the operation of any hydroelectric or water storage reservoir or related facility. No right to divert or store public waters shall be granted by the department of water resources which shall conflict with regulations adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or levels. All regulations establishing flows or levels shall be filed in a "Minimum Water Level and Flow Register" of the department of water resources. [1969 ex.s. c 284 § 5.]

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.22.040 Stockwatering requirements. It shall be the policy of the state, and the department of ecology shall be so guided in the implementation of RCW 90.22.010 and 90.22.020, to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for stock on riparian grazing lands which drink directly therefrom where such retention shall not result in an unconscionable waste of public waters. The policy hereof shall not apply to stockwatering relating to feed lots and other activities which are not related to normal stockgrazing land uses. [1987 c 109 § 104; 1969 ex.s. c 284 § 6.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1969 ex.s. c 284: See note following RCW 90.48.290.

90.22.050 Civil penalties. See RCW 90.03.600.

Chapter 90.24

REGULATION OF OUTFLOW OF LAKES

Sections

90.24.010	Petition to regulate flow—Order—Exceptions.
90.24.020	Contents of petition.
90.24.030	Title of petition—Service of petition and order—Notice.
90.24.040	Hearing on petition—Order—Continuing jurisdiction.
90.24.050	Devices to protect the fish—Cost—Special fund.
90.24.060	Installation of devices.
90.24.070	Appeal.

Reviser's note: "State supervisor of hydraulics" and/or "supervisor of hydraulics" have been changed to "supervisor of water resources" or "supervisor" throughout this chapter; see note following title digest.

90.24.010 Petition to regulate flow—Order—Exceptions. Ten or more owners of real property abutting on a meandered lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. The

court, after hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any meandered lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea. [1985 c 398 § 28; 1959 c 258 § 1; 1939 c 107 § 2; RRS § 7388-1.]

Effective date—1985 c 398: "Sections 28 through 30 of this act shall take effect January 1, 1986." [1985 c 398 § 31.]

Lake management districts: Chapter 36.61 RCW.

90.24.020 Contents of petition. Such petition shall contain a complete description of the property surrounding said lake with the number of front feet contained in each tract with the name of the owner thereof and his address together with a brief statement of the reasons and necessity for such application; that the level sought to be established will in no wise interfere with the navigability of said lake or in any manner affect or interfere with fish or game fish which may be then contained or may thereafter be deposited in said lake, but that in order to protect fish or game fish in said lake the construction of fish ladders or other devices may be required to conserve and protect such fish or game fish, then in that event the property owners to be benefited by the establishment of said water level in such lake shall be required to pay the cost thereof, in proportion to lineal feet of water front owned by each. [1939 c 107 § 3; RRS § 7388-2.]

90.24.030 Title of petition—Service of petition and order—Notice. The petition shall be entitled "In the matter of fixing the level of Lake _____ in _____ county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon the director of fisheries and of *game and the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application. [1987 c 109 § 105; 1963 c 243 § 1; 1959 c 258 § 2; 1947 c 210 § 1; 1939 c 107 § 4; Rem. Supp. 1947 § 7388-3.]

***Reviser's note:** References to the "director of game" mean the "director of wildlife." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.24.040 Hearing on petition—Order—Continuing jurisdiction. At the hearing evidence shall be introduced in support of the petition and all interested parties may be heard for or against it. The court shall make findings and conclusions and enter an order granting or refusing the petition, and if the petition is granted, shall fix the water level to be maintained and direct the department of ecology to regulate and control the outflow of the lake so as to properly maintain the water level so far as practicable within maximum and minimum limits when the proper control devices are installed: *Provided*, That the court shall have continuing jurisdiction after a petition is once granted and shall, upon subsequent petition filed and heard in accordance with the preceding sections, make such further findings and conclusions and enter such further orders as are necessary to accomplish fully the objectives sought in the initial petition: *And provided further*, That shall the court find any such riparian owners abutting on a stream or river flowing from such lake be adversely affected in any way by the granting of such a petition, such petition shall be refused. [1985 c 398 § 29; 1959 c 258 § 3; 1939 c 107 § 5; RRS § 7388-4.]

Effective date—1985 c 398: See note following RCW 90.24.010.

90.24.050 Devices to protect the fish—Cost—Special fund. In the event the court shall find that to protect fish and game fish in said lake that fish ladders or other devices should be constructed therein or that other construction shall be necessary in order to maintain the determined lake level, the court shall find the proper device to be constructed, the probable cost thereof and by its order and judgment shall apportion the cost thereof among the persons whose property abuts on said lake in proportion to the lineal feet of waterfront owned by each, which sum so found shall constitute a lien against said real property and shall be paid to the county treasurer and by him placed in a special fund to be known as "Lake _____ Improvement Fund." The supervisor of water resources shall appoint a suitable person to be compensated by the property owners to regulate the determined level as decreed by the court. [1939 c 107 § 6; RRS § 7388-5.]

90.24.060 Installation of devices. Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the respective directors of the department of fisheries, the *department of game and the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050. [1987 c 109 § 106. Prior: 1939 c 107 § 7; RRS § 7388-6.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.24.070 Appeal. Any person aggrieved by the order of judgment of the superior court may appeal to the supreme court or the court of appeals in the same manner as in other civil actions. [1971 c 81 § 177; 1939 c 107 § 8; RRS § 7388-7.]

Chapter 90.28

MISCELLANEOUS RIGHTS AND DUTIES

Sections

90.28.010	Right to back and hold waters over roads, streets and alleys—Procedure.
90.28.020	Right to back and hold waters over roads, streets and alleys—Relocation—Acquisition of rights—Abandonment.
90.28.040	Limitation on number of irrigation ditches across land.
90.28.150	Improving streams for logging.
90.28.160	Fencing across streams.
90.28.170	Dams across streams.

90.28.010 Right to back and hold waters over roads, streets and alleys—Procedure. The department of transportation may, in its sole discretion, grant to any person or corporation the right, privilege, and authority to perpetually back and hold the waters of any lake, river, stream, slough, or other body of water, upon or over any state, county, or permanent highway or road, or any street or alley within the limits of any town or city of the fourth class, or any part thereof, and overflow and inundate the same whenever the director of ecology deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use and shall so certify to the department of transportation. The decision of the department of transportation, in the absence of bad faith, arbitrary, capricious, or fraudulent action, is conclusive. But the right shall not be granted until it has been heretofore or is hereafter determined in a condemnation suit instituted by the person or corporation desiring to obtain the right or rights in the county wherein is situated that part of the road, highway, street, or alley so to be affected that the use for which the grant is sought is a public use, nor until there is filed with the clerk of the court in which the order or decree of public use was entered a bond or undertaking signed by the person or corporation seeking the grant, executed by a surety company authorized to do business in this state, conditioned to pay all costs and expenses of every kind and description connected with and incident to the relocation and reconstruction of any such highway, road, street, or alley, the same to be of substantially the same type and grade of construction as that of the highway, road, street, or alley to be overflowed or inundated, including any such relocation, reconstruction, and maintenance costs and expenses as may arise within a period of eighteen months after the new highway, road, street, or alley has been opened in its entirety to public travel, and also including any and all damages for which the state, county, city, or town may be liable because of the vacation of any such highway, road, street, or alley and the relocation thereof in the manner provided herein and to

save harmless the state, county, city, or town from the payment of the same or any part thereof. The bond shall be in a penal sum of double the estimated amount of the expenses, costs, and damages referred to above. In the case of a state highway the estimate shall be made by the department of transportation. In case of a county road or permanent highway the estimate shall be made by the county legislative authority, and in the case of a street or alley of a town or city of the fourth class the estimate shall be made by the city or town council. The bond shall be approved by the department of transportation when the road to be affected is a state highway, and in all other cases by a judge of the superior court in which the order or decree of public use was entered. In the condemnation suit the state of Washington shall be made a party defendant when the road affected is a state highway. If the road is a county road or permanent highway the county in which the road or permanent highway is situated shall be made a party defendant, and when any street or alley in any town or city of the fourth class is affected the city or town shall be made a party defendant. Any person or corporation may acquire the right to overflow as against the owner of the fee in any such highway, road, street, or alley by making the owner of the fee or of any part thereof a party defendant in the condemnation suit provided for herein or by instituting a separate condemnation suit against any such owner. The damages sustained by any such owner as a result of the overflow of any such highway, road, street, or alley shall be determined as in other condemnation cases, separate and apart from any damage sustained by the state, county, city, or town. [1984 c 7 § 385; 1929 c 154 § 1; 1927 c 202 § 1; RRS § 7354-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Eminent domain by corporations: Chapter 8.20 RCW.

Private ways of necessity: Chapter 8.24 RCW.

90.28.020 Right to back and hold waters over roads, streets and alleys—Relocation—Acquisition of rights—Abandonment. It shall be the duty of the *state highway committee, if the road to be affected shall be a state highway, or of the board of county commissioners of the county in which such road is located, if the road to be affected shall be a county road, or permanent highway, or of the town council of any town or city of the fourth class in which the road is located, if the road to be affected shall be a street or alley, within thirty days after entry of said order or decree of public use and the filing of the bond mentioned in RCW 90-28.010, to enter an appropriate order or resolution directing the relocation and reestablishment and completion forthwith of such highway, road, street or alley in place of that so to be overflowed or inundated, and promptly thereafter to acquire all property and rights of way necessary therefor, instituting and diligently prosecuting such condemnation suits as may be necessary in order to secure such property and rights of way. The decision of the committee, board or council as to relocation and reestablishment set forth in such order or resolution shall be final and conclusive as to all matters and things set forth therein, including the question

of public use and necessity in any and all condemnation suits to be brought under RCW 90.28.010 and 90.28.020. After the reestablishment and relocation of any such highway, road, street or alley and the construction and opening thereof in its entirety to public travel and the signing of the grant authorized in RCW 90.28.010, the state highway, county road or permanent highway, street or alley or such part thereof described in said grant shall be deemed to be abandoned and thereafter cease to be a highway, road, street or alley. [1927 c 202 § 2; RRS § 7354–2.]

***Reviser's note:** The "state highway committee" was abolished and its powers and duties transferred to the department of transportation through a chain of statutes as follows: 1929 c 115 § 4 (director of highways); 1951 c 247 § 4 (state highway commission); RCW 47.01.031.

Eminent domain by corporations: Chapter 8.20 RCW.

Private ways of necessity: Chapter 8.24 RCW.

90.28.040 Limitation on number of irrigation ditches across land. No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch. [1890 p 717 § 39; RRS § 7401.]

90.28.150 Improving streams for logging. It shall be lawful for any person or company interested in logging to make such improvements on any stream used for logging within the state of Washington as may be necessary to carry on said logging business; that such improvements may consist in clearing out obstructions and straightening the channel by cutting across sand or gravel bars, and that side dams and sheer booms may be used in making such improvements. [1891 c 120 § 1; No RRS.]

90.28.160 Fencing across streams. Owners of land or their agents shall have the right to fence across all unmeandered streams at any time when such streams are not used for a public highway, or by making a fence that will not be an obstruction. [1891 c 120 § 3; No RRS.]

90.28.170 Dams across streams. There is hereby granted to persons, firms and corporations organized among other things, for irrigation and power purposes, the right to construct and maintain dams and works incident thereto over, upon and across the beds of the rivers of the state of Washington in connection with such power and irrigation purposes, and there is hereby granted to such persons, firms and corporations an easement over, upon and across the beds of such rivers for such purposes. Such easement shall be limited however, to so much of the beds of such rivers as may be reasonable and necessary for such uses. All such dams and works shall be completed within five years after the commencement of construction work upon the

same. The rights and privileges granted by this section shall inure to the benefit of such persons, firms or corporations from the date of the commencement of construction work upon such dams and works incident thereto, and such construction work shall be diligently prosecuted to completion, and the rights, privileges and easements granted by this section shall continue so long as the same shall be utilized by the grantees for the purposes herein specified, and the failure to maintain and use such dams and works after the same shall have been constructed, for a continuous period of two years, shall operate as a forfeiture of all the rights hereby granted and the same shall revert to the state of Washington: *Provided*, That nothing in this section shall be construed in such a way as to interfere with the use of said rivers for navigation purposes, and all of such rights, privileges and easements granted hereby shall be subject to the paramount control of such rivers for navigation purposes by the United States: *And, provided further*, That the use and enjoyment of the grants and privileges of this section shall not interfere with the lawful and rightful diversion of the waters of said rivers by other parties under water appropriations in existence at the time any such persons, firms or corporations shall avail themselves of the benefits and privileges of this section, but no such persons, firms or corporations shall have any right to construct any such dams or works over, upon or across the land between ordinary high water and extreme low water of any river of this state without first having acquired the right to do so from the owner or owners of the lands adjoining the land between ordinary high water and extreme low water over or across which said dam or works are constructed. [1911 c 95 § 1; RRS § 7416.]

Reviser's note: For later enactment, see chapter 90.03 RCW.

Height of dams on tributaries of Columbia river: Chapter 75.20 RCW.

Chapter 90.36

ARTESIAN WELLS

Sections

90.36.010	Right-of-way to wells.
90.36.020	Flow limited during certain period—Exceptions.
90.36.030	Capping well—Exceptions.
90.36.040	Right of neighboring owner to cap well—Lien.
90.36.050	Penalty—1901 c 121.

Aquifer protection areas: Chapter 36.36 RCW.

90.36.010 Right-of-way to wells. Any person who may be entitled to water from any artesian well shall have the right to condemn the right-of-way for a ditch to convey such water for the purpose of irrigation over the lands intervening between such well and the place where the party owning such water wishes to use the same, and such right-of-way may be condemned sufficient for the purposes of conveying the water, together with the right of ingress and egress, to construct, maintain and repair said ditch, *as is hereinafter provided for in this act. [1890 p 711 § 18; RRS § 7403.]

***Reviser's note:** The language "as is hereinafter provided for in this act" refers to 1889-90 pp 706-728 §§ 1-67 which has since been repealed with the exception of those sections now codified as RCW 90.28.030 and 90.28.040. Compare the provisions of later enactment in chapter 90.03 RCW.

90.36.020 Flow limited during certain period—
Exceptions. It shall be unlawful for any person, firm, corporation or company having possession or control of any artesian well within the state, whether as contractor, owner, lessee, agent or manager, to allow or permit water to flow or escape from such well between the fifteenth day of October in any year and the fifteenth day of March next ensuing; *Provided*, That *this act shall only apply to sections and communities wherein the use of water for the purpose of irrigation is necessary or customary; and *Provided further*, That nothing herein contained shall prevent or prohibit the use of water from any such well between said fifteenth day of October and the fifteenth day of March next ensuing, for household, stock and domestic purposes only, water for said last named purposes to be taken from such well through a three-quarters inch stop and waste cock to be inserted in the piping of such well for that purpose. [1929 c 138 § 1; 1901 c 121 § 1; RRS § 7404.]

***Reviser's note:** "This act" refers to 1901 c 121 codified in RCW 90.36.020 through 90.36.050.

90.36.030 Capping well—Exceptions. It shall be the duty of every person, firm, corporation or company having possession or control of any artesian well, as provided in RCW 90.36.020, to securely cap the same over on or before the fifteenth day of October in each and every year in such manner as to prevent the flow or escape of water therefrom, and to keep the same securely capped and prevent the flow or escape of water therefrom until the fifteenth day of March next ensuing; *Provided, however*, It shall and may be lawful for any such person, firm, corporation or company to insert a three-quarters inch stop and waste cock in the piping of such well, and to take and use water therefrom through such stop and waste cock at any time for household, stock, or domestic purposes, but not otherwise. [1929 c 138 § 2; 1901 c 121 § 2; RRS § 7405.]

90.36.040 Right of neighboring owner to cap well—Lien. Whenever any person, firm, corporation or company in possession or control of an artesian well shall fail to comply with the provisions of *this act, any person, firm, corporation or company lawfully in the possession of land situate adjacent to or in the vicinity or neighborhood of such well and within five miles thereof may enter upon the land upon which such well is situate, and take possession of such from which water is allowed to flow or escape in violation of the provisions of RCW 90.36.020, and cap such well and shut in and secure the flow or escape of water therefrom, and the necessary expenses incurred in so doing shall constitute a lien upon said well, and a sufficient quantity of land surrounding the same for the convenient use and operation thereof, which lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court in any

such case shall allow the plaintiff a reasonable attorney's fee to be taxed as a part of the cost. This shall be in addition to the penalty provided for in RCW 90.36.050. [1901 c 121 § 4; RRS § 7407.]

***Reviser's note:** "This act", see note following RCW 90.36.020.

90.36.050 Penalty—1901 c 121. Any person whether as owner, lessee, agent or manager having possession or control of any such well, violating the provisions of *this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars for each and every such offense, and the further sum of two hundred dollars for each ten days during which such violation shall continue. [1901 c 121 § 3; RRS § 7406.]

***Reviser's note:** "This act", see note following RCW 90.36.020.

Chapter 90.40

WATER RIGHTS OF UNITED STATES

Sections	
90.40.010	Eminent domain by the United States.
90.40.020	Right to use water courses.
90.40.030	Notice and certificate, effect of.
90.40.040	Appropriation of water—Title to beds and shores.
90.40.050	Reservation of needed lands—Procedure.
90.40.060	Restrictions on sale of state lands within project.
90.40.070	Federal water users' association—Exemption from fees.
90.40.080	Federal water users' association—Records by county auditor.
90.40.090	Permit for Grand Coulee project.
90.40.100	Columbia Basin Project—Water appropriated pursuant to RCW 90.40.030—Periodic renewal not required.

90.40.010 Eminent domain by the United States. The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the state of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court. [1905 c 88 § 1; RRS § 7408.]

Condemnation by corporations: Chapter 8.20 RCW.

Eminent domain, railroads—Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings: RCW 8.20.140, 28B.20.330, 81.36.020, 81.36.060, 81.52.040, 81.53.180.

90.40.020 Right to use water courses. The United States shall have the right to turn into any natural or

artificial water course, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said water course for irrigation purposes subject to existing rights. [1905 c 88 § 2; RRS § 7409.]

90.40.030 Notice and certificate, effect of. Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commissioner of public lands of this state that pursuant to the provisions of the act of congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any of such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or extend into two or more counties, then for the same period in a newspaper in each of such counties: *Provided*, That in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor the waters specified in such notice shall, after the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: *And provided further*, That in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters

within said three years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never filed. [1905 c 88 § 3; RRS § 7410.]

Reviser's note: This section refers to the "commissioner of public lands" in several instances. Note that a later act, the 1917 Water Code, in section 27 (RCW 90.03.250) states in part:

"*Provided, further*, That nothing in this act contained shall be deemed to affect chapter 88 of the Laws of 1905 except that the notice and certificate therein provided for in section 3 thereof shall be addressed to the state hydraulic engineer after the passage of this act, and the state hydraulic engineer shall exercise the powers and perform the duties prescribed by said section 3."

Chapter 88, Laws of 1905 referred to in the above quotation is the instant chapter and "section 3" is the instant section. The language "this act" in the above quotation refers to the 1917 Water Code codified as chapter 90.03 RCW. The "state hydraulic engineer" referred to in the quotation has been changed throughout the remainder of this title because of the devolution of the powers and duties to "supervisor of water resources", see note following the title digest. Thus, the language "commissioner of public lands" is retained in the instant section and in RCW 90.40.050 and 90.40.060 because while some of the duties have been transferred to the hydraulic engineer thence to the supervisor of water resources not all of such duties prescribed in this chapter have so devolved.

90.40.040 Appropriation of water—Title to beds and shores. Whenever said secretary of the interior or other duly authorized officer of the United States shall cause to be let a contract for the construction of any irrigation works or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in RCW 90.40.030, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, or projects, for which water has been withdrawn or reserved under RCW 90.40.030, including any and all divisions thereof, theretofore constructed, in whole or in part, by the United States or proposed to be thereafter constructed by the United States, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, except that the date of priority as to all rights under such appropriation in behalf of the United States shall relate back to the date of the first withdrawal or reservation of the waters so appropriated, and in case of filings on water previously withdrawn under RCW 90.40.030, no payment of fees will be required. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said appropriation had been made by a private person, corporation or association. The title to the beds and shores of any navigable lake or stream utilized by the construction of any reservoir or other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the

United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works. [1929 c 95 § 1; 1905 c 88 § 4; RRS § 7411.]

90.40.050 Reservation of needed lands—Procedure. When the notice provided for in RCW 90.40.030 shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the term "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights-of-way for canals, ditches or laterals or sites for reservoirs and structures therefor or appurtenant thereto, or such additional rights-of-way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights-of-way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. [1905 c 88 § 5; RRS § 7412.]

Reviser's note: See note following RCW 90.40.030.

90.40.060 Restrictions on sale of state lands within project. After the receipt by the commissioner of public lands of the notice from the secretary of the interior or other officer of the United States provided for in RCW 90.40.030, no lands belonging to the state, susceptible of irrigation and within the area to be irrigated from the works projected by the United States and specified in such notice shall be sold except in conformity to the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued: *Provided*, That the restrictions upon the sale or other disposal by the state of any state lands provided for in this section shall continue for the same periods, respectively, and upon the same conditions, as specified in RCW 90.40.030 for the withdrawal of waters from appropriation: *And provided further*, That in case the authorization by the United States for the construction of irrigation works pursuant to RCW 90.40.030 shall be made within the period of three years specified therefor in said section, then the restrictions upon and conditions prescribed for the sale

or other disposal of said lands in this section shall continue so long as any such lands shall remain unsold or not disposed of. [1905 c 88 § 6; RRS § 7413.]

Reviser's note: See note following RCW 90.40.030.

90.40.070 Federal water users' association—Exemption from fees. Any water users' association which is organized in conformity with the requirements of the United States under said act of congress, and which under its articles of incorporation is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of twenty dollars for the filing and recording of its articles of incorporation and the issuance of certificates of incorporation. Whenever, with the consent of the secretary of the interior of the United States, the stockholders of any such association shall adopt any other form of organization to manage the affairs of such reclamation project in connection with which any such water users' association has been organized, such association may dissolve or disincorporate itself by the procedure and subject to the laws relating to the disincorporation of corporations in this state when such dissolution is authorized by a vote of two-thirds of all the stockholders represented at a meeting of the stockholders called for such purpose. [1919 c 42 § 1; 1905 c 88 § 7; RRS § 7414.]

Corporations and associations (nonprofit): Title 24 RCW.

90.40.080 Federal water users' association—Records by county auditor. It shall be the duty of the county auditor to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under said act of congress, and to use such books for recording stock subscriptions of such associations; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form. [1905 c 88 § 8; RRS § 7415.]

90.40.090 Permit for Grand Coulee project. An application filed by the Columbia Basin Commission or its assignee, the United States Bureau of Reclamation, for a permit to appropriate waters of the Columbia River under chapter 90.03 RCW, for the development of the Grand Coulee project shall be perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, but no fees, as provided for in RCW 90.03.470, shall be required. [1933 ex.s. c 13 § 4; RRS § 7399-1, pocket part.]

Severability—1933 ex.s. c 13: "The adjudication of invalidity of any section, clause, or part of a section of this act, shall not impair or otherwise affect the validity of the act as a whole or any part thereof." [1933 ex.s. c 13 § 6; RRS § 7399-2.] This applies to RCW 89.16.050 and 90.40.090.

90.40.100 Columbia Basin Project—Water appropriated pursuant to RCW 90.40.030—Periodic renewal not required. Any water withdrawn from appropriation pursuant to RCW 90.40.030 associated with the Columbia Basin Project shall continue as withdrawn from appropriation, without need for periodic renewal, until the project is declared completed or abandoned by the United States acting by and through the secretary of the interior or such other duly authorized officer of the United States. [1987 c 491 § 1.]

Chapter 90.44

REGULATION OF PUBLIC GROUND WATERS

Sections

90.44.020	Purpose of chapter.
90.44.030	Chapter not to affect surface water rights.
90.44.035	Definitions.
90.44.040	Public ground waters subject to appropriation.
90.44.050	Permit to withdraw.
90.44.060	Laws governing withdrawal.
90.44.070	Limitations on granting permit.
90.44.080	Certificate—Showing required.
90.44.090	Certificate of vested rights.
90.44.100	Amendment to permit or certificate.
90.44.110	Waste of water prohibited—Exceptions.
90.44.120	Penalty for waste or unauthorized use of water.
90.44.130	Priorities as between appropriators—Department in charge of ground water withdrawals—Establishment and modification of ground water areas and depth zones—Declarations by claimant of artificially stored water.
90.44.180	Hearing to adjust supply to current needs.
90.44.200	Water supervisors—Duties—Compensation.
90.44.220	Proceedings to determine rights to water.
90.44.230	Effect of findings and judgment.
90.44.250	Investigations—Reports of appropriators.
90.44.400	Ground water management areas—Purpose—Standards—Identification—Designation.
90.44.410	Ground water management advisory committee—Requirements for ground water management programs—Review of programs.
90.44.420	Ground water management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs.
90.44.430	Ground water management programs—Guidance to local governments and certain departments.
90.44.440	Existing rights not affected.
90.44.500	Civil penalties.
90.44.900	Exemption—Hazardous waste remedial action.

Reviser's note: "Supervisor of hydraulics" has been changed to "supervisor of water resources" or "supervisor" throughout this chapter, see note following title digest.

Aquifer protection areas: Chapter 36.36 RCW.

90.44.020 Purpose of chapter. This chapter regulating and controlling ground waters of the state of Washington shall be supplemental to chapter 90.03 RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state. [1945 c 263 § 1; Rem. Supp. 1945 § 7400–1.]

90.44.030 Chapter not to affect surface water rights. The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of

surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of ground water may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to ground water. [1945 c 263 § 2; Rem. Supp. 1945 § 7400–2.]

90.44.035 Definitions. For purposes of this chapter:

(1) "Department" means the department of ecology;

(2) "Director" means the director of ecology;

(3) "Ground waters" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves. There is a recognized distinction between natural ground water and artificially stored ground water;

(4) "Natural ground water" means water that exists in underground storage owing wholly to natural processes; and

(5) "Artificially stored ground water" means water that is made available in underground storage artificially, either intentionally, or incidentally to irrigation and that otherwise would have been dissipated by natural waste. [1987 c 109 § 107; 1973 c 94 § 2; 1945 c 263 § 3; RRS § 7400–3. Formerly RCW 90.44.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Purpose—1973 c 94: "It is the purpose of this 1973 amendatory act to state as well as reaffirm the intent of the legislature that "ground waters," as defined in chapter 263, Laws of 1945, means all waters within the state existing beneath the land surface, and to remove any possible ambiguity which may exist as a result of the dissenting opinion in *State v. Ponten*, 77 Wn.2d 463 (1969), or otherwise, with regard to the meaning of "ground waters" in the present wording of RCW 90.44.035. The definition set forth in section 2 of this 1973 amendatory act accords with the interpretation given by all of the various administrative agencies having responsibility for administration of the act since its enactment in 1945." [1973 c 94 § 1.] This applies to the amendment to RCW 90.44.035 by 1973 c 94 § 2.

90.44.040 Public ground waters subject to appropriation. Subject to existing rights, all natural ground waters of the state as defined in RCW 90.44.035, also all artificial ground waters that have been abandoned or forfeited, are hereby declared to be public ground waters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not otherwise. [1945 c 263 § 4; Rem. Supp. 1945 § 7400–4.]

90.44.050 Permit to withdraw. After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: *Except, however,* That any withdrawal of public ground

waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: *Provided, however,* That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: *Provided, further,* That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day. [1987 c 109 § 108; 1947 c 122 § 1; 1945 c 263 § 5; Rem. Supp. 1947 § 7400-5.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.060 Laws governing withdrawal. Applications for permits for appropriation of underground water shall be made in the same form and manner provided in RCW 90.03.250 through 90.03.340, as amended, the provisions of which sections are hereby extended to govern and to apply to ground water, or ground water right certificates and to all permits that shall be issued pursuant to such applications, and the rights to the withdrawal of ground water acquired thereby shall be governed by RCW 90.03.250 through 90.03.340, inclusive: *Provided,* That each application to withdraw public ground water by means of a well or wells shall set forth the following additional information: (1) the name and post office address of the applicant; (2) the name and post office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the ground water area, sub-area, or zone from which withdrawal is proposed, provided the department has designated such area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: *And provided further,* That any permit issued pursuant to an application for constructing a well or wells to withdraw public ground water may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head. [1987 c 109 § 109; 1945 c 263 § 6; Rem. Supp. 1945 § 7400-6.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.070 Limitations on granting permit. No permit shall be granted for the development or withdrawal of public ground waters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The department shall have the power to determine whether the granting of any such permit will injure or damage any vested or existing right or rights under prior permits and may in addition to the records of the department, require further evidence, proof, and testimony before granting or denying any such permits. [1987 c 109 § 110; 1945 c 263 § 7; Rem. Supp. 1945 § 7400-7.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.080 Certificate—Showing required. Upon a showing to the department that construction has been completed in compliance with the terms of any permit issued under the provisions of this chapter, it shall be the duty of the department to issue to the permittee a certificate of ground water right stating that the appropriation has been perfected under such permit: *Provided, however,* That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any preexisting well or wells or works constructed under an earlier permit or approved declaration of a vested right, provided the distance to such pre-existing well or works is not more than a quarter of a mile; (2) the depth and diameter of each well or the depth and general specifications of any other works constructed under the terms of the permit; (3) the thickness in feet and the physical character of each bed, stratum, or formation penetrated by each well; (4) the length and position, in feet below the land surface, and the commercial specifications of all casing, also of each screen or perforated zone in the casing of each well constructed; (5) the tested capacity of each well in gallons a minute, as determined by measuring the discharge of the pump or pumps after continuous operation for at least four hours or, in the case of a flowing well, by measuring the natural flow at the land surface; (6) for each nonflowing well, the depth to the static ground water level as measured in feet below the land surface immediately before the well-capacity test herein provided, also the draw-down of the water level, in feet, at the end of said well-capacity test; (7) for each flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface; and (8) such additional factual information as reasonably may be required by the department to establish compliance with the terms of the permit and with the provisions of this chapter.

The well driller or other constructor of works for the withdrawal of public ground waters shall be obligated to furnish the permittee a certified record of the factual

information necessary to show compliance with the provisions of this section. [1987 c 109 § 111; 1945 c 263 § 8; Rem. Supp. 1945 § 7400–8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.090 Certificate of vested rights. Any person, firm or corporation claiming a vested right to withdraw public ground waters of the state by virtue of prior beneficial use of such water shall, within three years after June 6, 1945, be entitled to receive from the department a certificate of ground water right to that effect: *Provided*, That the issuance by the department of any such certificate of vested right shall be contingent on a declaration by the claimant in a form prescribed by the department, which declaration shall set forth: (1) the beneficial use for which such withdrawal has been made; (2) the date or approximate date of the earliest beneficial use of the water so withdrawn, and the continuity of such beneficial use; (3) the amount of water claimed; (4) if the beneficial use has been for irrigation, the description of the land to which such water has been applied and the name of the owner thereof; and (5) so far as it may be available, descriptive information concerning each well or other works for the withdrawal of public ground water, as required of original permittees under the provisions of RCW 90.44.080: *Provided, however*, That in case of failure to comply with the provisions of this section within the three years allotted, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Each such declaration shall be certified, either on the basis of the personal knowledge of the declarant or on the basis of information and belief. With respect to each such declaration there shall be publication, and findings in the same manner as provided in RCW 90.44.060 in the case of an original application to appropriate water. If the department's findings sustain the declaration, the department shall approve said declaration, which then shall be recorded at length with the department and may also be recorded in the office of the county auditor of the county within which the claimed withdrawal and beneficial use of public ground water have been made. When duly approved and recorded as herein provided, each such declaration or copies thereof shall have the same force and effect as an original permit granted under the provisions of RCW 90.44.060, with a priority as of the date of the earliest beneficial use of the water.

Declarations heretofore filed with the department in substantial compliance with the provisions of this section shall have the same force and effect as if filed after June 6, 1945.

The same fees shall be collected by the department in the case of applications for the issuance of certificates of vested rights, as are required to be collected in the case of application for permits for withdrawal of ground waters and for the issuance of certificates of ground water withdrawal rights under this chapter. [1987 c 109 § 112;

1947 c 122 § 2; 1945 c 263 § 9; Rem. Supp. 1947 § 7400–9.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.100 Amendment to permit or certificate. After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or he may change the manner or the place of use of the water: *Provided, however*, That such amendment shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (1) The additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit. [1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400–10.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.110 Waste of water prohibited—Exceptions. No public ground waters that have been withdrawn shall be wasted without economical beneficial use. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. The department shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, the department shall also require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of public ground waters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: *Provided, however*, That the withdrawal of reasonable quantities of public ground water in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public ground waters under

the provisions of this chapter, the department may, as in his judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section. [1987 c 109 § 114; 1949 c 63 § 1; 1945 c 263 § 11; Rem. Supp. 1949 § 7400-11.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.120 Penalty for waste or unauthorized use of water. The unauthorized use of ground water to which another person is entitled, or the wilful or negligent waste of ground water, or the failure, when required by the department, to cap flowing wells or equip the same with valves, fittings, or casings to prevent waste of ground waters, or to cap or plug wells producing waters which contaminate other waters, shall be a misdemeanor. [1987 c 109 § 115; 1949 c 63 § 2; 1947 c 122 § 3; Rem. Supp. 1949 § 7400-11A.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.130 Priorities as between appropriators—Department in charge of ground water withdrawals—Establishment and modification of ground water areas and depth zones—Declarations by claimant of artificially stored water. As between appropriators of public ground water, the prior appropriator shall as against subsequent appropriators from the same ground water body be entitled to the preferred use of such ground water to the extent of his appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of ground water limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The department shall have jurisdiction over the withdrawals of ground water and shall administer the ground water rights under the principle just set forth, and it shall have the jurisdiction to limit withdrawals by appropriators of ground water so as to enforce the maintenance of a safe sustaining yield from the ground water body. For this purpose, the department shall have authority and it shall be its duty from time to time, as adequate factual data become available, to designate ground water areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of such existing area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public ground waters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public ground water. Each such sub-area may be so designated as to enclose all or any part of a distinct body of public ground water, as the department deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a ground water area, sub-area, or zone may be

proposed by the department on its own motion or by petition to the department signed by at least fifty or one-fourth, whichever is the lesser number, of the users of ground water in a proposed ground water area, sub-area, or zone. Before any proposed ground water area, sub-area, or zone shall be designated, or before the boundaries or any existing ground water area, sub-area, or zone shall be modified the department shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, sub-area, or zone, or within the area, sub-area, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the department. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.

Objections having been heard as herein provided, the department shall make and file in its office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the ground water area, or sub-area, or zone or modifying the boundaries of the existing area, sub-area, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by RCW 43.21B.310. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, sub-area, or zone.

Priorities of right to withdraw public ground water shall be established separately for each ground water area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of ground water right shall be the date of filing of the original application for a withdrawal with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested ground water right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a ground water area, sub-area or zone as herein provided, any person, firm or corporation then claiming to be the owner of artificially stored ground water within such area, sub-area, or zone shall file a certified declaration to that effect with the department on a form prescribed by the department. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial ground water storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored ground water, and the name or names of the owner or owners thereof;

(3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the department. If any of the purported artificially stored ground water has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claimants to a vested right to withdraw public ground waters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public ground water from the area, sub-area, or zone concerned: *Provided, however,* That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings—as in the case of an original application, permit, or certificate of right to appropriate public ground waters—the department shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored ground water. Acceptance of such declaration or declarations by the department shall convey to the declarant no right to withdraw public ground waters from the particular area, sub-area, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm or corporation hereafter claiming to be the owner of ground water within a designated ground water area, sub-area, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim with the department, as herein prescribed for claims based on artificial storage prior to such designation: *Provided, however,* That in case of such failure the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm or corporation hereafter withdrawing ground water claimed to be owned by virtue of artificial storage subsequent to designation of the relevant ground water area, sub-area, or zone shall, within ninety days following the earliest such withdrawal, file with the department the declarations required by this chapter with respect to withdrawals of public ground water. [1987 c 109 § 116; 1947 c 122 § 4; 1945 c 263 § 12; Rem. Supp. 1947 § 7400-12. Formerly RCW 90.44.130 through 90.44.170.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.180 Hearing to adjust supply to current needs. At any time the department may hold a hearing on its own motion, and shall hold a hearing upon petition of at least fifty or one-fourth, whichever is the lesser number,

of the holders of valid rights to withdraw public ground waters from any designated ground water area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in RCW 90.44.130 with respect to the designation or modification of a ground water area, or sub-area, or zone.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public ground waters from the particular ground water area, sub-area, or zone, the department shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the department, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: *Provided,* That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded in the department. [1987 c 109 § 117; 1945 c 263 § 13; Rem. Supp. 1945 § 7400-13.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.200 Water supervisors—Duties—Compensation. The department, as in its judgment is deemed necessary and advisable, may appoint one or more ground water supervisors for each designated ground water area, sub-area, or zone, or may appoint one or more ground water supervisors-at-large. Within their respective jurisdictions and under the direction of the department, such supervisor and supervisors-at-large shall supervise the withdrawal of public ground waters and the carrying out of orders issued by the department under the provisions of this chapter.

The duties, compensation, and authority of such supervisors or supervisors-at-large shall be those prescribed for water masters under the terms of RCW 90.03.060 and 90.03.070. [1987 c 109 § 118; 1945 c 263 § 15; Rem. Supp. 1945 § 7400-15.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Water master's power of arrest: RCW 90.03.090.

90.44.220 Proceedings to determine rights to water. In its discretion or upon the application of any party claiming right to the withdrawal and use of public ground water, the department may file a petition with the superior court of the county for the determination of the rights of appropriators of any particular ground water body and all the provisions of RCW 90.03.110 through 90.03.240 as heretofore amended, shall govern and apply to the adjudication and determination of such

ground water body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights—either rights to the use of surface water or to the use of ground water, or both—pursuant to chapter 90.03 RCW as heretofore amended, all appropriators of ground water or of surface water in the particular basin or area may be included as parties to such adjudication, as pertinent. [1987 c 109 § 119; 1945 c 263 § 17; Rem. Supp. 1945 § 7400–17.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional powers and duties enumerated—Payment from reclamation account: RCW 89.16.055.

Application of RCW sections to specific proceedings: RCW 90.14.200.

Determination of water rights

scope: RCW 90.03.245.

state to bear its expenses incurred in and on appeal: RCW 90.03.243.

90.44.230 Effect of findings and judgment. In any determination of the right to withdrawal of ground water under RCW 90.44.220, the department's findings and the court's findings and judgment shall determine the priority of right and the quantity of water to which each appropriator who is a party to the proceedings shall be entitled, shall determine the level below which the ground water body shall not be drawn down by appropriators, or shall reserve jurisdiction for the determination of a safe sustaining water yield as necessary from time to time to preserve the rights of the several appropriators and to prevent depletion of the ground water body. [1987 c 109 § 120; 1945 c 263 § 18; Rem. Supp. 1945 § 7400–18.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.250 Investigations—Reports of appropriators. The department is hereby authorized to make such investigations as may be necessary to determine the location, extent, depth, volume, and flow of all ground waters within the state and in making such examination, hereby is authorized and directed to cooperate with the federal government, with any county or municipal corporation, or any person, firm, association or corporation, and upon such terms as may seem appropriate to it.

In connection with such investigation, the department from time to time may require reports from each ground water appropriator as to the amount of public ground water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be in a form prescribed by the department. [1987 c 109 § 121; 1945 c 263 § 19; Rem. Supp. 1945 § 7400–19. Formerly RCW 90.44.210.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.400 Ground water management areas—

Purpose—Standards—Identification—Designation. (1) This legislation is enacted for the purpose of

identifying ground water management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality, assurance of quantity, and efficient management of water resources to meet future needs.

In recognition of existing water rights and the need to manage ground water aquifers for future use, the department of ecology shall, by rule, establish standards, criteria, and a process for the designation of specific ground water areas or sub-areas, or separate depth zones within such area or sub-area, and provide for either the department of ecology, local governments, or ground water users of the area to initiate development of a ground water management program for each area or sub-area, consistent with state and local government objectives, policies, and authorities. The department shall develop and adopt these rules by January 1, 1986.

(2) The department of ecology, in cooperation with other state agencies, local government, and user groups, shall identify probable ground water management areas or sub-areas. The department shall also prepare a general schedule for the development of ground water management programs that recognizes the available local or state agency staff and financial resources to carry out the intent of RCW 90.44.400 through 90.44.420. The department shall also provide the option for locally initiated studies and for local government to assume the lead agency role in developing the ground water management program and in implementing the provisions of RCW 90.44.400 through 90.44.420. The criteria to guide identification of the ground water areas or sub-areas shall include but not be limited to, the following:

(a) Aquifer systems that are declining due to restricted recharge or over-utilization;

(b) Aquifer systems in which over-appropriation may have occurred and adjudication of water rights has not yet been completed;

(c) Aquifer systems currently being considered for water supply reservation under chapter 90.54 RCW for future beneficial uses;

(d) Aquifers identified as the primary source of supply for public water supply systems;

(e) Aquifers designated as a sole source aquifer by the federal environmental protection agency; and

(f) Geographical areas where land use may result in contamination or degradation of the ground water quality.

(3) In developing the ground water management programs, priority shall be given to areas or sub-areas where water quality is imminently threatened. [1985 c 453 § 1.]

90.44.410 Ground water management advisory committee—Requirements for ground water management programs—Review of programs. (1) To assist in the development of ground water management programs, a ground water management advisory committee, with representation from major user and public interest groups, and state and local governments shall be appointed by the department for each area or sub-area.

The procedure for advisory committee appointment, terms of appointment, and committee responsibilities shall be addressed in the rules prepared under RCW 90.44.400.

(2) The ground water area or sub-area management programs shall include:

(a) A description of the specific ground water area or sub-areas, or separate depth zones within any such area or sub-area, and the relationship of this zone or area to the land use management responsibilities of county government;

(b) A management program based on long-term monitoring and resource management objectives for the area or sub-area;

(c) Identification of water resources and the allocation of the resources to meet state and local needs;

(d) Projection of water supply needs for existing and future identified user groups and beneficial uses;

(e) Identification of water resource management policies and/or practices that may impact the recharge of the designated area or policies that may affect the safe yield and quantity of water available for future appropriation;

(f) Identification of land use and other activities that may impact the quality and efficient use of the ground water, including domestic, industrial, solid, and other waste disposal, underground storage facilities, or storm water management practices;

(g) The design of the program necessary to manage the resource to assure long-term benefits to the citizens of the state;

(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;

(i) Long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in accordance with the ground water area or sub-area management programs and/or other water right procedures;

(j) Annual withdrawal rates and safe yield guidelines which are directed by the long-term management programs that recognize annual variations in aquifer recharge;

(k) A description of conditions and potential conflicts and identification of a program to resolve conflicts with existing water rights;

(l) Alternative management programs to meet future needs and existing conditions, including water conservation plans; and

(m) A process for the periodic review of the ground water management program and monitoring of the implementation of the program.

(3) The ground water area or sub-area management programs shall be submitted for review in accordance with the state environmental policy act. [1985 c 453 § 2.]

90.44.420 Ground water management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs. The department of ecology shall consider the ground water area or sub-area management plan for adoption in accordance with this chapter and chapter 90.54 RCW.

Upon completion of the ground water area or sub-area management program, the department of ecology shall hold a public hearing within the designated ground water management area for the purpose of taking public testimony on the proposed program. Following the public hearing, the department of ecology and affected local governments shall (1) prepare findings which either provide for the subsequent adoption of the program as proposed or identify the revisions necessary to ensure that the program is consistent with the intent of this chapter, and (2) adopt regulations, ordinances, and/or programs for implementing those provisions of the ground water management program which are within their respective jurisdictional authorities. [1985 c 453 § 3.]

90.44.430 Ground water management programs—Guidance to local governments and certain departments. The department of ecology, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans, and facilities that may utilize or impact the implementation of the program. [1985 c 453 § 4.]

90.44.440 Existing rights not affected. RCW 90.44.400 through 90.44.430 shall not affect any water rights existing as of May 21, 1985. [1985 c 453 § 5.]

90.44.500 Civil penalties. See RCW 90.03.600.

90.44.900 Exemption—Hazardous waste remedial action. A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.105B RCW is exempt from the procedural and substantive requirements of this chapter. [1987 3rd ex.s. c 2 § 31.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

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Chapter 90.48

WATER POLLUTION CONTROL

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90.48.010 Policy enunciated. It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington. [1973 c 155 § 1; 1945 c 216 § 1; Rem. Supp. 1945 § 10964a.]

90.48.015 Powers, duties and functions of water pollution control commission, director thereof, transferred to department of ecology. See RCW 43.21A.060.

90.48.020 Definitions. Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the

public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology. [1987 c 109 § 122; 1967 c 13 § 1; 1945 c 216 § 2; Rem. Supp. 1945 § 10964b.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.030 Jurisdiction of department. The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington. [1987 c 109 § 123; 1945 c 216 § 10; Rem. Supp. 1945 § 10964j. FORMER PART OF SECTION: 1945 c 216 § 11; Rem. Supp. 1945 § 10964k, now codified as RCW 90.48.035.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.035 Rule-making authority. The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010. [1987 c 109 § 124; 1970 ex.s. c 88 § 11; 1967 c 13 § 6; 1945 c 216 § 11; Rem. Supp. 1945 § 10964k. Formerly RCW 90.48.030, part.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.037 Authority of department to bring legal actions to enforce chapter. The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter. [1987 c 109 § 125; 1967 c 13 § 7.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.080 Discharge of polluting matter in waters prohibited. It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that

shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter. [1987 c 109 § 126; 1967 c 13 § 8; 1945 c 216 § 14; Rem. Supp. 1945 § 10964n.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.090 Right of entry. The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state. [1987 c 109 § 127; 1945 c 216 § 15; Rem. Supp. 1945 § 10964o.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.095 Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees. In carrying out the purposes of this chapter the department shall, in conjunction with either the promulgation of rules and regulations, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in contested cases, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court. [1987 c 109 § 128; 1967 c 13 § 9.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.100 Request for assistance. The department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the department to carry out the provisions of this chapter. [1987 c 109 § 129; 1945 c 216 § 16; Rem. Supp. 1945 § 10964p.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.110 Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department. All plans and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter. [1987 c 109 § 130; 1967 c 13 § 10; 1945 c 216 § 17; Rem. Supp. 1945 § 10964q.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.120 Notice of department's determination that violation has or will occur—Report to department of compliance with determination—Order or directive to be issued—Notice. (1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of such determination, such person shall file with the department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of chapter 90.48 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed. [1987 c 109 § 131; 1985 c 316 § 3; 1973 c 155 § 2; 1967 c 13 § 11; 1945 c 216 § 18; Rem. Supp. 1945 § 10964r.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Appeal of orders under RCW 90.48.120(2): RCW 43.21B.310.

90.48.140 Penalty. Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the department or a court in pursuance thereof shall be deemed guilty of a

crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a wilful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [1973 c 155 § 8; 1945 c 216 § 20; Rem. Supp. 1945 § 10964t.]

90.48.142 Violations—Liability in damages for injury or death of fish, animals, vegetation—Action to recover. Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department or the director made pursuant to the provisions of this chapter, including the conditions of a waste discharge permit issued pursuant to RCW 90.48.160, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake or other water source to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: *Provided*, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to either the state *game fund or the department of fisheries to use for food fish or shellfish management purposes and propagation, or to any other agency of the state having jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate: *Provided*, That the agency receiving such money shall utilize not less than one-half of said money on activities or projects within the county where the action was brought by the attorney general. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160. [1987 c 109 § 132; 1985 c 316 § 6; 1970 ex.s. c 88 § 12; 1967 ex.s. c 139 § 13.]

*Reviser's note: References to the "game fund" mean the "wildlife fund." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1967 ex.s. c 139: See RCW 82.34.900.

90.48.144 Violations—Civil penalty—Procedure. Every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or

(3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or regulations or orders adopted or issued pursuant thereto, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. [1987 c 109 § 17; 1985 c 316 § 2; 1973 c 155 § 9; 1970 ex.s. c 88 § 13; 1967 ex.s. c 139 § 14.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1967 ex.s. c 139: See RCW 82.34.900.

90.48.150 Construction of chapter. This chapter shall not be construed as repealing any of the laws governing the pollution of the waters of the state, but shall be held and construed as ancillary to and supplementing the same and an addition to the laws now in force, except as the same may be in direct conflict herewith. [1945 c 216 § 21; Rem. Supp. 1945 § 10964u.]

90.48.153 Cooperation with federal government—Federal funds. The department is authorized to cooperate with the federal government and to accept grants of federal funds for carrying out the purposes of this chapter. The department is empowered to make any application or report required by an agency of the federal government as an incident to receiving such grants. [1987 c 109 § 133; 1949 c 58 § 1; Rem. Supp. 1949 § 10964pp. Formerly RCW 90.48.040.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.156 Cooperation with other states—Interstate projects. The department is authorized to cooperate with appropriate agencies of neighboring states, to enter into contracts, and make contributions toward interstate projects to carry out the purposes of this chapter. [1987 c 109 § 134; 1949 c 58 § 2; Rem. Supp. 1949 § 10964pp-1. Formerly RCW 90.48.050.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.~~

90.48.160 Waste disposal permit—Required—

Exemptions. Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: *Provided*, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems; or

(2) Any category of waste disposer; if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. [1973 c 155 § 3; 1967 c 13 § 13; 1955 c 71 § 1.]

Collection of administrative expenses of permits: RCW 90.48.460.

90.48.162 Waste disposal permits required of counties, municipalities and public corporations. Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW 90.48.160 to counties and municipal or public corporations and the provisions of RCW 90.48.170 through *90.48.210 and 90.52.040 shall be applicable to the permit requirement imposed under this section. [1972 ex.s. c 140 § 1.]

*Reviser's note: RCW 90.48.210 was repealed by 1987 c 109 § 159. *Collection of administrative expenses of permits: RCW 90.48.460.*

90.48.165 Waste disposal permits required of counties, municipalities and public corporations—Cities, towns or municipal corporations may be granted authority to issue permits—Revocation—Termination of permits. Any city, town or municipal corporation operating a sewerage system including treatment facilities may be granted authority by the department to issue permits for the discharge of wastes to such system provided the department ascertains to its satisfaction that the sewerage system and the inspection and control program operated and conducted by the city, town or municipal corporation will protect the public interest in the quality of the state's waters as provided for in this chapter. Such authority may be granted by the department

upon application by the city, town or municipal corporation and may be revoked by the department if it determines that such city, town, or municipal corporation is not, thereafter, operated and conducted in a manner to protect the public interest. Persons holding municipal permits to discharge into sewerage systems operated by a municipal corporation authorized by this section to issue such permits shall not be required to secure a waste discharge permit provided for in RCW 90.48.160 as to the wastes discharged into such sewerage systems. Authority granted by the department to cities, towns, or municipal corporations to issue permits under this section shall be in addition to any authority or power now or hereafter granted by law to cities, towns and municipal corporations for the regulation of discharges into sewerage systems operated by such cities, towns, or municipal corporations. Permits issued under this section shall automatically terminate if the authority to issue the same is revoked by the department. [1987 c 109 § 135; 1967 c 13 § 14.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.~~

90.48.170 Waste disposal permits required of counties, municipalities and public corporations—Application—Notice as to new operation or increase in volume—Investigation—Notice to other state departments. Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his views or notify the department of his interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. Upon receipt by the department of an application, it shall immediately send notice thereof

containing pertinent information to the directors of fisheries and *game and to the secretary of social and health services. When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state. [1987 c 109 § 136; 1967 c 13 § 15; 1955 c 71 § 2.]

*Reviser's note: References to the "director of game" mean the "director of wildlife." See note following RCW 77.04.020.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.180 Waste disposal permits required of counties, municipalities and public corporations—Issuance—Conditions—Duration. The department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW 90.48.010. The department shall have authority to specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance. [1987 c 109 § 137; 1967 c 13 § 16; 1955 c 71 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.190 Waste disposal permits required of counties, municipalities and public corporations—Termination—Grounds. A permit shall be subject to termination upon thirty days' notice in writing if the department finds:

- (1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;
- (2) That there has been a violation of the conditions thereof;
- (3) That a material change in quantity or type of waste disposal exists; or
- (4) That an applicant or permittee has failed to pay required fees under RCW 90.48.460 or 90.48.610. [1987 3rd ex.s. c 2 § 43; 1987 c 109 § 138; 1967 c 13 § 17; 1955 c 71 § 4.]

Intent—1987 3rd ex.s. c 2 §§ 35–43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.195 Waste disposal permits required of counties, municipalities and public corporations—Modification or additional conditions may be ordered. In the

event that a material change in the condition of the state waters occurs the department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued. [1987 c 109 § 139; 1967 c 13 § 18.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.200 Waste disposal permits required of counties, municipalities and public corporations—Nonaction upon application—Temporary permit—Duration. In the event of failure of the department to act upon an application within sixty days after it has been filed the applicant shall be deemed to have received a temporary permit. Said permit shall authorize the applicant to discharge wastes into waters of the state as requested in its application only until such time as the department shall have taken action upon said application. [1987 c 109 § 140; 1967 c 13 § 19; 1955 c 71 § 5.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.230 Application of administrative procedure law to rule making and contested cases. The provisions of chapter 34.04 RCW, as it now exists or may be hereafter amended, shall apply to all rule making and contested cases authorized by or arising under the provisions of this chapter. [1967 c 13 § 21.]

90.48.240 Water pollution orders for conditions requiring immediate action—Appeal. Notwithstanding any other provisions of this chapter, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied

with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310. [1987 c 109 § 15; 1967 c 13 § 22.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.250 Agreements or contracts to monitor waters and effluent discharge. The department is authorized to make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein, including contracts to monitor effluent discharged into public waters when such monitoring is required by the terms of a waste discharge permit or as part of the approval of a sewerage system, if adequate compensation is provided to the department as a term of the contract. [1987 c 109 § 141; 1967 c 13 § 23.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.260 Federal clean water act—Department designated as state agency, authority—Powers, duties and functions. The department of ecology is hereby designated as the State Water Pollution Control Agency for all purposes of the federal clean water act as amended and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (h) requirements for inspection, monitoring, entry, and

reporting; (i) enforcement of the program through penalties, emergency powers, and criminal sanctions; (j) a continuing planning process; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act. [1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

Severability—1983 c 270: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 270 § 5.]

Collection of administrative expenses of permits: RCW 90.48.460.

90.48.262 Implementation of RCW 90.48.260—Permits for energy facilities—Rules and procedures.

(1) The powers established under RCW 90.48.260 shall be implemented by the department through the adoption of rules in every appropriate situation. The permit program authorized under RCW 90.48.260(1) shall constitute a continuation of the established permit program of RCW 90.48.160 and other applicable sections within chapter 90.48 RCW. The appropriate modifications as authorized in *this 1973 amendatory act are designed to avoid duplication and other wasteful practices and to insure that the state permit program contains all required elements of and is compatible with the requirements of any national permit system.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council: *Provided*, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to said chapter. The council shall have all powers necessary to establish and administer a point source discharge permit program pertaining to such plants, consistent with applicable receiving water quality standards established by the department, and to qualify for full participation in any national waste discharge or pollution discharge elimination permit system. The council and the department shall each adopt, by rules, procedures which will provide maximum coordination and avoid duplication between the two agencies with respect to permits in carrying out the requirements of *this act including, but not limited to, monitoring and enforcement of certification agreements, and in qualifying for full participation in any such national system. [1975-'76 2nd ex.s. c 108 § 41; 1973 c 155 § 5.]

***Reviser's note:** "This 1973 amendatory act" and "this act" apparently refer to 1973 c 155, which consists of this section, amendments to

RCW 90.48.010, 90.48.120, 90.48.140, 90.48.144, 90.48.160, 90.48.260, and the repeal of RCW 90.48.070.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21 F.010.

90.48.270 Sewage drainage basins—Authority of department to delineate and establish. The department shall have authority to delineate and establish sewage drainage basins in the state for the purpose of developing and/or adopting comprehensive plans for the control and abatement of water pollution within such basins. Basins may include, but are not limited to, rivers and their tributaries, streams, coastal waters, sounds, bays, lakes, and portions or combinations thereof, as well as the lands drained thereby. [1987 c 109 § 142; 1967 c 13 § 26.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21 B.001.

Aquifer protection areas: Chapter 36.36 RCW.

90.48.280 Sewage drainage basins—Comprehensive plans for sewage drainage basins. The department is authorized to prepare and/or adopt a comprehensive water pollution control and abatement plan and to make subsequent amendments thereto, for each basin established pursuant to RCW 90.48.270. Comprehensive plans for sewage drainage basins may be prepared by any municipality and submitted to the department for adoption.

Prior to adopting a comprehensive plan for any basin or any subsequent amendment thereof the department shall hold a public hearing thereon. Notice of such hearing shall be given by registered mail, together with copies of the proposed plan, to each municipality, or other political subdivision, within the basin exercising a sewage disposal function, at least twenty days prior to the hearing date. Such hearing may be continued from time to time and, at the termination thereof, the department may reject the plan proposed or adopt it with such modifications as it shall deem proper.

Following adoption of a comprehensive plan for any basin, the department shall require compliance with such plan by any municipality or person operating or constructing a sewage collection, treatment or disposal system or plant, or any improvement to or extension of an existing sewage collection, treatment or disposal system or plant, within the basin. [1987 c 109 § 143; 1967 c 13 § 27.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21 B.001.

90.48.285 Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects—Requisites—Priorities. The department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste

into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the department. Any such contract may provide for:

The payment by the department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the department.

Contracts made by the department shall be subject to the following limitations:

(1) No contract shall be made unless the department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.

(2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the department to conform with the basin comprehensive plan.

(3) The department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.

(4) The department shall provide such reasonable terms and conditions of repayment of advances as it may determine.

(5) The total outstanding amount which the department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.

(6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the department.

In making such contracts the department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand. [1987 c 109 § 144; 1980 c 32 § 13; 1969 ex.s. c 141 § 1.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21 B.001.

Severability—1969 ex.s. c 141: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1969 ex.s. c 141 § 2.]

90.48.290 Grants to municipal or public corporations or political subdivisions to aid water pollution control projects—Limitations. The department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for

the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: *Provided*, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter, and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: *Provided*, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located within a drainage basin unless the department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the department to conform with such basin comprehensive plan: *Provided*, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the department for any grant application filed with the department prior to July 1, 1974, in those situations where the department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this section and were commenced after the recipient had filed a grant application with the department. [1987 c 109 § 145; 1969 ex.s. c 284 § 1; 1967 c 13 § 28.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1969 ex.s. c 284: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 284 § 24.] This applies to RCW 90.48.290, 90.48.295, 90.22.010 through 90.22.040, 90.14.031 through 90.14.121, 43.27A.190 through 43.27A.220, 43.27A.075, and to the repeal of RCW 43.21.145 and 90.14.030 through 90.14.120.

90.48.300 Pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

90.48.315 Discharge of oil into waters of the state—Definitions. For purposes of RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 the following definitions shall apply unless the context indicates otherwise:

(1) "Board" shall mean the pollution control hearings board.

(2) "Department" shall mean the department of ecology.

(3) "Director" shall mean the director of the department of ecology.

(4) "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(5) "Fund" shall mean the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(6) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(7) "Necessary expenses" means the expenses incurred by the department for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; and (c) conducting actions necessary to clean up the discharge.

(8) "Oil" or "oils" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, or any other petroleum related product.

(9) "Person" shall mean any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever and any owner, operator, master, officer, or employee of a ship.

(10) "Ship" shall mean any boat, ship, vessel, barge, or other floating craft of any kind.

(11) "Waters of the state" shall include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [1985 c 316 § 5; 1971 ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10.]

***Reviser's note:** "RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907" has been substituted for the term "this 1971 amendatory act". "This 1971 amendatory act" [1971 ex.s. c 180] consists of the 1971 amendments to RCW 78.52.020, 82.36.330 and 90.48.315, to new sections codified as RCW 78.52.125, 90.48.370 through 90.48.410, 90.48.903, 90.48.906, and 90.48.907, and to the repeal of RCW 82.36.235.

Severability—1969 ex.s. c 133: "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid,

this 1969 act can be given effect without the invalid provision or application; and to this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 ex.s. c 133 § 12.] This applies to RCW 90.48.315 through 90.48.365.

Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.

90.48.320 Discharge of oil into waters of the state—Unlawful for oil to enter waters—Exceptions. It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or on-shore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the department prior to the entry of the oil into state waters;

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200;

(3) Where a person having control over the oil can prove that a discharge was caused by:

(a) An act of war or sabotage, or

(b) Negligence on the part of the United States government, or the state of Washington. [1987 c 109 § 146; 1970 ex.s. c 88 § 2; 1969 ex.s. c 133 § 1.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.325 Discharge of oil into waters of the state—Obligation to collect and remove or contain, treat and disperse after entry—Director to prohibit harmful dispersants. It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.48.320 to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to him that use thereof would be detrimental to the public interest. [1970 ex.s. c 88 § 3; 1969 ex.s. c 133 § 2.]

90.48.330 Discharge of oil into waters of the state—Department may investigate, remove, contain, treat or disperse oil discharged—Limitation—Record of expenses incurred. The department is authorized, with the staff, equipment and material under its control, or by contract with others, to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services

performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property. [1987 c 109 § 147; 1970 ex.s. c 88 § 4; 1969 ex.s. c 133 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.335 Discharge of oil into waters of the state—Liability for expenses incurred by department. Any person who fails to immediately collect, remove, contain, treat or disperse oil when under an obligation to do so as provided in RCW 90.48.325, shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.48.330. [1970 ex.s. c 88 § 5; 1969 ex.s. c 133 § 4.]

90.48.336 Discharge of oil into waters of the state—Strict liability of owner or controller of oil for damages to persons or property—Exceptions. Any person owning oil or having control over the same which enters the waters of the state in violation of RCW 90.48.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. In any action to recover such damages, said person shall be relieved from strict liability, without regard to fault, if he can prove that the oil to which the damages relate entered the waters of the state by causes set forth in RCW 90.48.320(3). [1970 ex.s. c 88 § 6.]

90.48.338 Discharge of oil into waters of the state—Other persons causing entry of oil directly liable to state for cleanup expenses—Cause of action by persons liable under RCW 90.48.325 and 90.48.350 against others. In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to RCW 90.48.325 and 90.48.350, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state shall have a cause of action to recover from any or all of said persons. Any person liable for cost of oil cleanup as provided in RCW 90.48.325 and 90.48.350 shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under RCW 90.48.350. [1970 ex.s. c 88 § 7.]

90.48.340 Discharge of oil into waters of the state—Department investigation of circumstances of entry—Order for reimbursement of expenses incurred by department—Modification—Action to recover necessary expenses. The department shall investigate each activity or project conducted under RCW 90.48.330 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for

the act or acts which result in said entry. Whenever it appears to the department, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.48.335, the department shall notify said person or persons by appropriate order: *Provided*, That no order may be issued pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. Said order shall state the findings of the department, the amount of necessary expenses incurred by the department in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The department may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the department may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the department notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the department subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business, or in any other court of competent jurisdiction, to recover the amount specified in the final order of the department. No order issued under this section shall be construed as an order within the meaning of RCW 43.21B.310 and shall not be appealable to the hearings board. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if he can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in RCW 90.48.320(3). [1987 c 109 § 148; 1985 c 316 § 4; 1970 ex.s. c 88 § 10; 1969 ex.s. c 133 § 5.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.343 Discharge of oil into waters of the state—Permit required prior to discharge—Authority of director. Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and treatment requirements established by the department. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form

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prescribed by the director. [1987 c 109 § 149; 1970 ex.s. c 88 § 8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.345 Discharge of oil into waters of the state—Rules and regulations. The department shall adopt such rules and regulations as it deems necessary and proper for the purpose of carrying out the provisions of RCW 90.48.315 through 90.48.365. [1987 c 109 § 150; 1969 ex.s. c 133 § 6.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.350 Discharge of oil into waters of the state—Penalties. Any person who intentionally or negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day of a continuing violation; said amount to be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300. [1987 c 109 § 20; 1985 c 316 § 7; 1970 ex.s. c 88 § 9; 1969 ex.s. c 133 § 7.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.355 Discharge of oil into waters of the state—Right of entry, access to records, pertinent to investigations. The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of RCW 90.48.315 through 90.48.365, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs: *Provided*, That in connection with the authority granted herein no person shall be required to divulge trade secrets or secret processes. [1987 c 109 § 151; 1969 ex.s. c 133 § 8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.360 Discharge of oil into waters of the state—Duty to notify department of discharge—Exception. It shall be the duty of any person discharging

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oil or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the department at its office in Olympia, or a regional office thereof, of such discharge or entry. [1987 c 109 § 152; 1969 ex.s. c 133 § 9.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.365 Discharge of oil into waters of the state—Powers supplemental—Effect. RCW 90.48.315 through 90.48.365 shall grant authority to the department which is supplemental to and in no way reduces or otherwise modifies the powers heretofore granted to the department, except as it may directly conflict therewith. [1987 c 109 § 153; 1969 ex.s. c 133 § 11.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.370 Departmental powers and duties as exercise of state police power—Extension to all waters within state. The powers, duties, and functions conferred by *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be exercised by the department of ecology and shall be deemed an essential government function in the exercise of the police power of the state. Such powers, duties, and functions of the department and those conferred by RCW 90.48.315 through 90.48.365 shall extend to all waters within the boundaries of the state. [1971 ex.s. c 180 § 2.]

*Reviser's note: See note following RCW 90.48.315.

90.48.380 Rules and regulations—Scope. The department may adopt rules and regulations including but not limited to the following matters:

(1) Procedures and methods of reporting discharges and other occurrences prohibited by RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907;

(2) Procedures, methods, means, and equipment to be used by persons subject to regulation by RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 and such rules and regulations may prescribe the times, places and methods of transfer of oil;

(3) Coordination of procedures, methods, means, and equipment to be used in the removal of oil pollutants;

(4) Development and implementation of criteria and plans to meet oil pollution occurrences of various kinds and degrees;

(5) The establishment from time to time of control districts comprising sections of the state coast and the

establishment of rules and regulations to meet the particular requirements of each such district;

(6) Such other rules and regulations as the exigencies of any condition may require or such as may be reasonably necessary to carry out the intent of RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907. [1971 ex.s. c 180 § 3.]

*Reviser's note: See note following RCW 90.48.315.

90.48.390 Coastal protection fund—Established—Moneys credited to—Use. The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907. To this fund there shall be credited penalties, fees, and charges received pursuant to the provisions of RCW 90.48.315 through 90.48.365 and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be deposited with the state treasurer to the credit of the fund and may be invested in such manner as is provided for by law. Interest received on such investment shall be credited to the fund. [1971 ex.s. c 180 § 4.]

*Reviser's note: See note following RCW 90.48.315.

90.48.400 Coastal protection fund—Disbursal of moneys from. (1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 including but not limited to equipment rental and contracting costs.

(b) All costs involved in the abatement of pollution related to the discharge of oil.

(c) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil.

(2) Moneys disbursed from the coastal protection fund for the abatement of pollution caused by the discharge of oil shall be reimbursed to the fund whenever:

(a) Moneys are available under any federal program; or

(b) Moneys are available from a recovery made by the department from the person liable for the discharge of oil. [1971 ex.s. c 180 § 5.]

*Reviser's note: See note following RCW 90.48.315.

90.48.410 Procedure when violation of rule or regulation. Whenever it appears after investigation that there is a violation of any rule or regulation issued by the department, the department shall proceed in accordance with the provisions of RCW 90.48.120. [1971 ex.s. c 180 § 6.]

90.48.420 Water quality standards affected by forest practices—Department of ecology solely responsible for water quality standards—Forest practices regulations—Promulgation—Examination—Enforcement procedures. (1) The department of ecology, pursuant to powers vested in it previously by chapter 90.48 RCW and consistent with the policies of said chapter and RCW 90.54.020(3), shall be solely responsible for establishing water quality standards for waters of the state. On or before January 1, 1975, the department of ecology shall examine existing regulations containing water quality standards and other applicable rules and regulations of said department pertaining to waters of the state affected by nonpoint sources of pollution arising from forest practices and, when it appears appropriate to the department of ecology, modify said regulations. In any such examination or modification the department of ecology shall consider such factors, among others, as uses of the receiving waters, diffusion, down-stream cooling, and reasonable transient and short-term effects resulting from forest practices.

Promulgation of forest practices regulations by the department of ecology and the forest practices board, shall be accomplished so that compliance with such forest practice regulations will achieve compliance with water pollution control laws.

(2) The department of ecology shall monitor water quality to determine whether revisions in such water quality standards or revisions in such forest practices regulations are necessary to accomplish the foregoing result, and either promulgate appropriate revisions to such water quality standards or propose appropriate revisions to such forest practices regulations or both.

(3) Notwithstanding any other provisions of chapter 90.48 RCW or of the rules and regulations promulgated thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of RCW 76.09.010 through 76.09.280, forest practices regulations, and any approvals or directives of the department of natural resources thereunder.

(4) Prior to the department of ecology taking action under statutes or regulations relating to water quality, regarding violations of water quality standards arising from forest practices, the department of ecology shall notify the department of natural resources. [1975 1st ex.s. c 200 § 13; 1974 ex.s. c 137 § 30.]

Effective dates—1974 ex.s. c 137: See RCW 76.09.925.

Severability—1974 ex.s. c 137: See RCW 76.09.935.

Forest practices: Chapter 76.09 RCW.

Right of entry to administer this section: RCW 76.09.160.

90.48.425 Forest practices act and regulations relating to water quality protection to be utilized to satisfy federal water pollution act. The forest practices act, chapter 76.09 RCW, and the forest practices regulations adopted thereunder relating to water quality protection shall be utilized to satisfy the planning and program requirements of sections 208, 209, and 305 of the federal Water Pollution Control Act, as regards silvicultural activities, unless it is determined by the department of ecology that extraordinary conditions exist which make forest practices regulations unsuitable to satisfy such federal requirements. [1975 1st ex.s. c 200 § 14.]

Provisions of state law pertaining to federal clean water act: RCW 90.48.260, 90.48.262.

90.48.450 Discharges from agricultural activity—Consideration to be given as to whether enforcement action would contribute to conversion of land to nonagricultural use—Minimize the possibility. (1) Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to non-agricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(2) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

(b) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities. [1981 c 297 § 31.]

Legislative finding, intent—1981 c 297: See note following RCW 70.94.640.

Severability—1981 c 297: See note following RCW 15.36.110.

90.48.460 Collection of administrative expenses for certain permits until June 30, 1988. Until June 30, 1988, the department of ecology shall collect administrative expenses from any person or entity requesting action of the department pertaining to the processing of applications for permits provided in RCW 90.48.160, 90.48.162, and 90.48.260. For the purposes of this section, "administrative expenses" shall mean the total actual costs incurred by the department in processing such permit applications. [1987 3rd ex.s. c 2 § 42; 1985 c 249 § 4.]

Intent—1987 3rd ex.s. c 2 §§ 35-43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.480 Reduction of sewer overflows—Plans—Compliance schedule—Report to the legislature. (1) The department of ecology shall work with local governments to develop reasonable plans and compliance schedules for the greatest reasonable reduction of combined sewer overflows. The plan shall address

various options, including construction of storage tanks for sewage and separation of sewage and stormwater transport systems. The compliance schedule shall be designed to achieve the greatest reasonable reduction of combined sewer overflows at the earliest possible date. The plans and compliance schedules shall be completed by January 1, 1988. A compliance schedule will be a condition of any waste discharge permit issued or renewed after January 1, 1988.

(2) By September 1, 1987, the department of ecology shall report to the legislature any statutory changes necessary to implement the plans and compliance schedules described in subsection (1) of this section. The report shall include (a) a recommended date by which all sewage treatment facilities shall achieve the greatest reasonable reduction of combined sewer overflows, and (b) a comprehensive assessment of the total cost to achieve compliance, the projected need and recommended distribution of local, state, and federal funding, and the availability of local, state, and federal funding. A thorough discussion of the potential funding sources shall accompany the report. [1985 c 249 § 2.]

90.48.490 Sewage treatment facilities—Plans to upgrade or construct. Plans for upgrading sewage treatment facilities and plans for new sewage treatment facilities shall address the greatest reasonable reduction of combined sewer overflows and implementation of pretreatment standards. [1985 c 249 § 3.]

90.48.500 Pollution Disclosure Act of 1971. See chapter 90.52 RCW.

90.48.510 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment. After June 30, 1988, any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state. All persons conducting refueling, bunkering, or lightering operations shall be trained in the use and deployment of oil spill containment and recovery equipment. After examining existing equipment locations, the methods and conditions of deployment, and accessibility of any federal or other publicly or privately owned and operated containment and recovery equipment or systems, and reviewing federal, state, or local laws, rules, or regulations and ordinances governing refueling, bunkering, or lightering of petroleum products, the department of ecology may adopt rules as necessary to carry out the provisions of this section. [1987 c 479 § 2.]

90.48.520 Review of operations before issuance or renewal of wastewater discharge permits—Incorporation of permit conditions. In order to improve water quality by controlling toxicants in wastewater, the department of ecology shall in issuing and renewing state and federal wastewater discharge permits review the applicant's operations and incorporate permit conditions

which require all known, available, and reasonable methods to control toxicants in the applicant's wastewater. Such conditions may include, but are not limited to: (1) Limits on the discharge of specific chemicals, and (2) limits on the overall toxicity of the effluent. The toxicity of the effluent shall be determined by techniques such as chronic or acute bioassays. Such conditions shall be required regardless of the quality of receiving water and regardless of the minimum water quality standards. In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria. [1987 c 500 § 1.]

90.48.550 Exemption—Hazardous waste remedial action. A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.105B RCW is exempt from the procedural and substantive requirements of this chapter. [1987 3rd ex.s. c 2 § 32.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.600 Recovery of administrative expenses for discharge permit system—Fiscal year 1989 and thereafter. Beginning in fiscal year 1989, the department shall recover its administrative expenses for operating all aspects of its water quality discharge permit system except adjustments specified in RCW 90.48.620 and those expenses that are directly related to enforcement by implementing a system to collect fees from persons holding state and federal waste discharge permits. The total amount of fees collected under this chapter in any fiscal year shall not exceed three million six hundred thousand dollars. Accordingly, for purposes of RCW 90.48.610 through 90.48.650, "administrative expenses" means the costs incurred by the department in:

- (1) Processing permit applications and modifications;
- (2) Monitoring and evaluating compliance with permits;
- (3) Conducting inspections;
- (4) Securing laboratory analysis of samples taken during inspections;
- (5) Reviewing required plans and documents directly related to operations of permittees;
- (6) Monitoring compliance with delegated pretreatment programs; and
- (7) Supporting the overhead expenses that are directly related to each of the preceding activities.

Administrative expenses shall not include costs related to processing of penalties and notices of violation, inspections that extend beyond routine compliance monitoring, criminal investigations, or the overhead expenses that are directly related to these activities. [1987 3rd ex.s. c 2 § 36.]

Intent—1987 3rd ex.s. c 2 §§ 35–43: "It is the intent of the legislature in enacting sections 35 through 43 of this act to provide the department of ecology with the necessary resources to adequately administer water quality discharge permits issued by the state. In doing this, the legislature intends to improve water quality state-wide by

enhancing the ability of the department of ecology to adequately inspect dischargers into state ground and surface waters and implement water pollution control laws. Further, the legislature intends also to improve water quality through better control of toxicants." [1987 3rd ex.s. c 2 § 35.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.610 Discharge permit fees—Establishment July 1, 1988—Report. (1) The department shall establish an initial fee schedule to be implemented on July 1, 1988.

(2) Except as provided in RCW 90.48.620, beginning on July 1, 1988, the department shall charge any person or entity holding a permit under RCW 90.48.160, 90.48.162, or 90.48.260, annual fees to recover administrative expenses as defined in RCW 90.48.600. In no event may the fee for any permit authorizing the discharge of eight hundred gallons or less in any one day exceed one hundred and fifty dollars for any fiscal year. This fee limit shall be periodically adjusted by the department to reflect inflation.

(3) The department shall establish an accounting mechanism to relate administrative expenses incurred in performing activities described in RCW 90.48.600 with fees charged to persons or entities holding permits by January 1, 1989.

(4) The department shall submit a report to the appropriate standing committees of the legislature on January 1, 1991, and biennially thereafter describing the actions it has taken over the prior biennium to improve the administrative efficiency of its water quality permit system. [1987 3rd ex.s. c 2 § 37.]

Intent—1987 3rd ex.s. c 2 §§ 35-43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.620 Fees—Credits. Fees charged pursuant to RCW 90.48.610 shall be subject to the following conditions:

(1) The department shall consider the economic impact of fees on small dischargers and shall provide appropriate adjustments.

(2) The department shall ensure that indirect dischargers do not pay twice for the administrative expenses of a permit. Accordingly, the department shall not assess fees for permits issued by a city, town, or municipal corporation under RCW 90.48.165.

(3) The department shall review applications for credits from any public entity engaging in comprehensive monitoring programs and shall approve or deny such applications, in whole or in part, before assessing permit fees. Credits shall be granted in accordance with a schedule adopted by the department by rule and shall not exceed twenty-five percent of the permit fee assessed over the five-year period of the permit. The total amount of credits granted for the five-year period beginning July 1, 1988, shall not exceed fifty thousand

dollars. Permit fee credits granted by the department shall not be recoverable from the water quality permit account. [1987 3rd ex.s. c 2 § 38.]

Intent—1987 3rd ex.s. c 2 §§ 35-43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.630 Water quality permit account—Use. All fees collected under RCW 90.48.610 shall be deposited in the water quality permit account, which is hereby created in the state treasury, subject to appropriation. Money in the account collected from fees shall be expended exclusively by the department of ecology for the purposes of administering permits issued by the department under RCW 90.48.160, 90.48.162, and 90.48.260. Other funds deposited into this account may be used for the purposes of this chapter. [1987 3rd ex.s. c 2 § 39.]

Intent—1987 3rd ex.s. c 2 §§ 35-43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.640 Report—Proposed fee schedule for fiscal years 1990 and beyond. (1) The department of ecology shall submit a report to the appropriate standing committees of the legislature no later than January 1, 1989. The report shall include a fee schedule proposed for use in fiscal years 1990 and beyond. The legislature shall evaluate this report in determining whether to change the revenue limit specified in RCW 90.48.600.

(2) In developing the fee schedule, the department shall consult with and be advised by representatives of dischargers, environmental organizations, other state agencies, and other interested parties. The advice received by the department shall be included in the report. The report shall also include a projection of the level of fees necessary to adequately operate the program. [1987 3rd ex.s. c 2 § 40.]

Intent—1987 3rd ex.s. c 2 §§ 35-43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.650 Discharge monitoring requirements. (1) In determining requirements for monitoring the condition of the waters of the state and of effluent discharged therein to be included in each permit issued by the department under RCW 90.48.160, 90.48.162, and 90.48.260, the department shall ensure that all such monitoring requirements are reasonably related to: (a) Determining compliance with the permit; (b) attaining all known, available, and reasonable treatment; or (c) determining what effects the discharge from the specific facility may have on the waters of the state or the biota or sediment in the waters of the state.

(2) Monitoring activities required pursuant to subsection (1)(c) of this section shall be structured so that, if monitoring is conducted within the terms of the permit, after an appropriate period of time, the permittee may request that the department reduce the monitoring schedule and/or scope. If in the determination of the department the results of the monitoring identify no measurable adverse effects or potential adverse effects to the waters of the state or biota or sediment in the waters of the state, then a reduced schedule and/or scope shall apply. If monitoring identifies measurable adverse effects or potential adverse effects of the discharge from the specific facility on the waters of the state or biota or sediment of the waters of the state, continued, more frequent, and/or more comprehensive monitoring shall be required by action of the department. The department may allow coordinated monitoring activities where discharges from multiple persons or entities holding permits may be causing cumulative effects and where cost savings will result from such coordination.

(3) A permit may be modified during its term to revise monitoring requirements pursuant to the applicable federal requirements or if monitoring methods or approaches become available that might reasonably be expected to measure adverse effects to the waters of the state or biota or sediment in the waters of the state. [1987 3rd ex.s. c 2 § 41.]

Intent—1987 3rd ex.s. c 2 §§ 35–43: See note following RCW 90.48.600.

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.48.900 Severability—1945 c 216. Should any section or provision of this act be held invalid by any court of competent jurisdiction, the same shall not affect the validity of the act as a whole or any part thereof other than that portion so held to be invalid. [1945 c 216 § 23.]

90.48.901 Severability—1967 c 13. If any provision of *this 1967 amendatory act or its application to any person or circumstance is held invalid the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1967 c 13 § 30.]

***Reviser's note:** "This 1967 amendatory act" [1967 c 13] consists of amendments to RCW 90.48.020, former RCW 90.48.021, and 90.48.024 through 90.48.026, since repealed, RCW 90.48.035, 90.48.080, 90.48.110, 90.48.120, 90.48.160 through 90.48.190, 90.48.200, 90.48.210; new sections RCW 90.48.037, 90.48.095, 90.48.135, 90.48.165, 90.48.195, 90.48.230 through 90.48.290, 90.48.901, 90.48.910; and the repeal of RCW 90.48.060 and 90.48.130.

90.48.902 Severability—1970 ex.s. c 88. If any provision of *this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision

to other persons or circumstances is not affected. [1970 ex.s. c 88 § 15.]

***Reviser's note:** "This 1970 amendatory act" [1970 ex.s. c 88] consists of amendments to RCW 90.48.035, 90.48.142, 90.48.144, 90.48.210, 90.48.315 through 90.48.335, 90.48.340, 90.48.350; and new sections RCW 90.48.336, 90.48.338, 90.48.343 and 90.48.902.

90.48.903 Severability—1971 ex.s. c 180. If any provision of *this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 180 § 12.]

***Reviser's note:** "This 1971 amendatory act" [1971 ex.s. c 180] consists of RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907.

90.48.906 Short title—1971 ex.s. c 180. *This 1971 amendatory act may be cited as the "Coastal Waters Protection Act of 1971". [1971 ex.s. c 180 § 13.]

***Reviser's note:** "This 1971 amendatory act" [1971 ex.s. c 180] consists of RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907.

90.48.907 Construction—1971 ex.s. c 180—Appeal not to stay order, rule or regulation. RCW 90.48.315 through 90.48.365 and *this 1971 amendatory act, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect their purposes. No rule, regulation, or order of the department shall be stayed pending appeal under the provisions of RCW 90.48.315 through 90.48.365 and *this 1971 amendatory act. [1971 ex.s. c 180 § 10.]

***Reviser's note:** "This 1971 amendatory act" [1971 ex.s. c 180] consists of RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907.

90.48.910 Remedies additional and cumulative—Other rights and remedies not abridged or estopped. It is the purpose of *this 1967 amendatory act to provide additional and cumulative remedies to prevent, abate and control the pollution of the waters of the state. Nothing in *this 1967 amendatory act shall be construed to abridge or alter alternative rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision hereof, or any act done by virtue hereof, be construed as estopping the state, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution. [1967 c 13 § 25.]

***Reviser's note:** "This 1967 amendatory act" [1967 c 13] consists of amendments to RCW 90.48.020, former RCW 90.48.021, and 90.48.024 through 90.48.026, since repealed, RCW 90.48.035, 90.48.080, 90.48.110, 90.48.120, 90.48.160 through 90.48.190, 90.48.200, 90.48.210; new sections RCW 90.48.037, 90.48.095, 90.48.135, 90.48.165, 90.48.195, 90.48.230 through 90.48.290, 90.48.901, 90.48.910; and the repeal of RCW 90.48.060 and 90.48.130.

Chapter 90.50
WATER POLLUTION CONTROL FACILITIES—
FINANCING

Sections	
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90.50.010 Bond issue—Authorized. For the purpose of providing state matching funds to assist public bodies in the construction and improvement of water pollution control facilities the state finance committee is hereby authorized to issue general obligation bonds of the state of Washington in the sum of twenty-five million dollars to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, the maximum rate of interest the same shall bear, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the interest and principal when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1970 ex.s. c 67 § 1; 1969 ex.s. c 232 § 63; 1967 c 106 § 1.]

Referral of act to electorate, when—1970 ex.s. c 67: "In the event all of the bonds authorized by RCW 90.50.010 through 90.50.080 and 90.50.900, have not been issued on or before September 2, 1970, then this 1970 amendatory act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1970, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution as amended, and the laws adopted to facilitate the operation thereof." [1970 ex.s. c 67 § 2.]

Effective, when—1970 ex.s. c 67: "Section 1 of this 1970 amendatory act shall not become effective unless this act is adopted and ratified at the referendum election provided for in section 2 of this 1970 amendatory act." [1970 ex.s. c 67 § 3.]

The foregoing annotations together with RCW 90.50.010 as hereinabove amended constitute 1970 ex.s. c 67.

Adoption—Ratification—1970 ex.s. c 67: The amendment to RCW 90.50.010 by 1970 ex.s. c 67 was adopted and ratified by the people at the November 3, 1970 general election (Referendum Bill No. 23).

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

90.50.020 Grants to public bodies authorized. The department of ecology is authorized to make and administer grants to any public bodies for the purpose of aiding in the construction and improvement of water pollution control facilities in conjunction with federal grants authorized pursuant to the Federal Water Pollution Control Act. [1987 c 109 § 154; 1967 c 106 § 2.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.50.030 Bond proceeds—Administration. The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct shall be administered by the department of ecology under the authority granted by RCW 90.50.020. [1987 c 109 § 155; 1980 c 32 § 14; 1967 c 106 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Effective date—Transfer of moneys—1980 c 32 § 14: "Section 14 of this act shall take effect on September 1, 1981. Any moneys held on that date in the account disestablished by section 14 of this act shall be transferred to the water pollution control facilities bond redemption fund." [1980 c 32 § 15.] Section 14 of this act is the 1980 c 32 amendment to RCW 90.50.030.

90.50.040 Water pollution control facilities bond redemption fund—Bonds payable from sales tax revenues—Remedies of bondholders. The water pollution control facilities bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and on July 1st of each year the state treasurer shall deposit such amount in said water pollution control facilities redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 214; 1967 c 106 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

90.50.050 Legislature may provide additional means for bond payment. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and

this shall not be deemed to provide an exclusive method for such payment. [1967 c 106 § 5.]

90.50.060 Bonds legal investment for state and municipal corporation funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1967 c 106 § 6.]

90.50.080 Definitions. For the purposes of this chapter the terms:

(1) "Water pollution control facilities" means the various devices used in the treatment of sewage or industrial wastes of a liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances, and includes any extensions, improvements, remodeling, additions, and alterations thereof;

(2) "Public bodies" means municipal or public corporations, counties, or departments or agencies of state government. [1967 c 106 § 8.]

90.50.900 Referral of act to electorate. This act shall be submitted to the people for their adoption and ratification, or rejection, at the next general election to be held in this state in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution as amended, and the laws adopted to facilitate the operation thereof. [1967 c 106 § 9.]

Reviser's note: Chapter 90.50 RCW was adopted and ratified by the people at the November 5, 1968, general election (Referendum Bill No. 17). Governor's proclamation declaring approval of measure is dated December 5, 1968. State Constitution Art. 2 § 1(d) provides: ". . . Such measure [initiatives and referendums] shall be in operation on and after the thirtieth day after the election at which it is approved. . ."

Chapter 90.52

POLLUTION DISCLOSURE ACT OF 1971

Sections

90.52.010	Annual reports required—Contents—Critical materials designated.
90.52.020	Confidentiality as to manufacturing processes.
90.52.030	Operation subject to injunction, when—Civil penalties.
90.52.040	Wastes to be provided with available methods of treatment prior to discharge into waters of the state.
90.52.900	Short title.

90.52.010 Annual reports required—Contents—Critical materials designated. Every person conducting a commercial or industrial operation within this state who discharges wastes, other than sanitary sewage, into waters of the state or into any sewer system which discharges into waters of the state, and every person conducting a commercial or industrial operation within the state who discharges wastes into the air of the state, shall file, annually, during the month of January, reports, on forms provided by the department of ecology, setting forth:

(1) The nature of the enterprise;

(2) A list of materials used in, and incidental to, its manufacturing processes, including by-products and waste products;

(3) The estimated annual total gallons or pounds (or other appropriate measurement) of wastes, including, but not limited to, process and cooling water to be discharged into the water or air, or into any sewer system.

The list of materials provided for in subsection (2) hereof shall relate to all materials designated by the director of the department of ecology, after consultation with a committee on [of] environmental specialists of not less than five appointed by the director, as critical materials which have substantial potential to adversely affect the quality of waters or environment of the state, or the uses made thereof, if allowed to enter the same. Formal designation shall be adopted by the director as a rule and filed in a "critical materials" registry of the department of ecology. "Person" as used herein means an individual partnership, firm, corporation, association or other entity. [1971 ex.s. c 160 § 1.]

90.52.020 Confidentiality as to manufacturing processes. The department of ecology shall provide proper and adequate procedures to safeguard the confidentiality of manufacturing processes: *Provided*, That the confidentiality shall not extend to waste products discharged into the waters or air of the state. [1971 ex.s. c 160 § 2.]

90.52.030 Operation subject to injunction, when—Civil penalties. Operation of an industrial or commercial operation in violation of RCW 90.52.010 may be enjoined on petition of the attorney general to the superior court of Thurston county or of the county in which the operation is located.

Operation of an industrial or commercial operation in violation of this chapter shall provide the basis of a civil penalty under RCW 90.48.144 or 70.94.431 as now or are hereafter amended. No person may discharge wastes into the waters or air of the state who fails to satisfy the requirements of RCW 90.52.010 and 90.52.040. [1971 ex.s. c 160 § 3.]

90.52.040 Wastes to be provided with available methods of treatment prior to discharge into waters of the state. Except as provided in RCW 90.54.020(3)(b), in the administration of the provisions of chapter 90.48 RCW, the director of the department of ecology shall, regardless of the quality of the water of the state to which wastes are discharged or proposed for discharge, and regardless of the minimum water quality standards established by the director for said waters, require wastes to be provided with all known, available, and reasonable methods of treatment prior to their discharge or entry into waters of the state. [1987 c 399 § 1; 1971 ex.s. c 160 § 4.]

90.52.900 Short title. This act shall be known and may be cited as the Pollution Disclosure Act of 1971. [1971 ex.s. c 160 § 5.]

Chapter 90.54

WATER RESOURCES ACT OF 1971

Sections	
90.54.010	Purpose.
90.54.020	General declaration of fundamentals for utilization and management of waters of the state.
90.54.030	Department to be informed as to all phases of water and related resources—Duties in so accomplishing—Water resources archive.
90.54.040	Department to develop, implement, state water resources program—Modifying existing and adopting new regulations and statutes.
90.54.050	Setting aside or withdrawing waters by adoption of rules—Public hearing, notice—Appeal.
90.54.060	Department to seek involvement of other persons and entities, means—Assistance grants.
90.54.080	State to vigorously represent its interests before federal agencies, interstate agencies.
90.54.090	State, local governments, municipal corporations to comply with chapter.
90.54.100	Department to evaluate needs for projects and alternative methods of financing—Report to legislature.
90.54.110	Authority to secure and obtain benefits, including grants.
90.54.120	"Department", "utilize" and "utilization" defined.
90.54.130	Land use management policy modifications—Advisory recommendations.
90.54.140	Protection of ground water aquifers if sole drinking water source.
90.54.150	Water supply projects—Cooperation with other agencies—Scope of participation.
90.54.160	Department to report on dam safety.
90.54.170	Electric generation facility—Evaluation of application to appropriate water.
90.54.900	Certain rights, authority, not to be affected by chapter.
90.54.910	Short title.

90.54.010 Purpose. The legislature finds that proper utilization of the water resources of this state is necessary to the promotion of public health and the economic well-being of the state and the preservation of its natural resources and aesthetic values. The legislature further finds that the availability of waters of the state is being evaluated by interests who desire to remove portions thereof from the state in a manner inconsistent with the public interest of people of the state. It is the purpose of this chapter to set forth fundamentals of water resource policy for the state to insure that waters of the state are protected and fully utilized for the greatest benefit to the people of the state of Washington and, in relation thereto, to provide direction to the department of ecology and other state agencies and officials, in carrying out water and related resources programs. [1971 ex.s. c 225 § 1.]

90.54.020 General declaration of fundamentals for utilization and management of waters of the state. Utilization and management of the waters of the state shall be guided by the following general declaration of fundamentals:

(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the

enjoyment of the public waters of the state, are declared to be beneficial.

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. Technology-based effluent limitations or standards for discharges for municipal water treatment plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted to reflect credit for substances removed from the plant intake water if:

(i) The municipality demonstrates that the intake water is drawn from the same body of water into which the discharge is made; and

(ii) The municipality demonstrates that no violation of receiving water quality standards or appreciable environmental degradation will result.

(4) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

(5) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(6) Federal, state, and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out practices of conservation as they relate to the use of the waters of the state.

(7) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public.

(8) Full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and ground waters.

(9) Expressions of the public interest will be sought at all stages of water planning and allocation discussions.

(10) Water management programs, including but not limited to, water quality, flood control, drainage, erosion control and storm runoff are deemed to be in the public interest. [1987 c 399 § 2; 1971 ex.s. c 225 § 2.]

90.54.030 Department to be informed as to all phases of water and related resources—Duties in so accomplishing—Water resources archive. For the purpose of insuring that the department is fully advised in relation to the performance of the water resources program provided in RCW 90.54.040, the department is directed to become informed with regard to all phases of water and related resources of the state. To accomplish this objective the department shall:

(1) Collect, organize and catalog existing information and studies available to it from all sources, both public and private, pertaining to water and related resources of the state;

(2) Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter;

(3) Determine existing and foreseeable uses of, and needs for, such waters and related resources;

(4) Develop alternate courses of action to solve existing and foreseeable problems of water and related resources and include therein, to the extent feasible, the economic and social consequences of each such course, and the impact on the natural environment.

All the foregoing shall be included in a "water resources archive" established and maintained by the department. The department shall develop a system of cataloging, storing and retrieving the information and studies of the archive so that they may be made readily available to and effectively used not only by the department but by the public generally. [1971 ex.s. c 225 § 3.]

90.54.040 Department to develop, implement, state water resources program—Modifying existing and adopting new regulations and statutes. (1) The department, through the adoption of appropriate rules, is directed, as a matter of high priority to insure that the waters of the state are utilized for the best interests of the people, to develop and implement in accordance with the policies of this chapter a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use. The department may develop the program in segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use.

(2) In relation to the management and regulatory programs relating to water resources vested in it, the department is further directed to modify existing regulations and adopt new regulations, when needed and possible, to insure that existing regulatory programs are in accord with the water resource policy of this chapter

and the program established in subsection (1) of this section.

(3) The department is directed to review all statutes relating to water resources which it is responsible for implementing. When any of the same appear to the department to be ambiguous, unclear, unworkable, unnecessary, or otherwise deficient, it shall make recommendations to the legislature including appropriate proposals for statutory modifications or additions. Whenever it appears that the policies of any such statutes are in conflict with the policies of this chapter, and the department is unable to fully perform as provided in subsection (2) of this section, the department is directed to submit statutory modifications to the legislature which, if enacted, would allow the department to carry out such statutes in harmony with this chapter. [1971 ex.s. c 225 § 4.]

90.54.050 Setting aside or withdrawing waters by adoption of rules—Public hearing, notice—Appeal. In conjunction with the programs provided for in RCW 90.54.040(1), whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule adopted pursuant to chapter 34.04 RCW:

(1) Reserve and set aside waters for beneficial utilization in the future, and

(2) When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.

Prior to the adoption of a rule under this section, the department shall conduct a public hearing in each county in which waters relating to the rule are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of said counties. Rules adopted hereunder shall be subject to review in accordance with the provisions of RCW 34.04.070 or 34.04.080. [1971 ex.s. c 225 § 5.]

90.54.060 Department to seek involvement of other persons and entities, means—Assistance grants. To insure that all of the various persons and entities having an interest in the water resources of the state and the programs of the chapter are provided with a full opportunity for involvement not only with the development of the program but the implementation by the department under this chapter, the following directions are given:

(1) The department shall make reasonable efforts to inform the people of the state about the state's water and related resources and their management. The department in the performance of the responsibilities provided in this chapter shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in water resources programs of this chapter.

(2) The department shall similarly invite and encourage participation by all agencies of federal, state and local government, including counties, municipal and public corporations, having interests or responsibilities relating

to water resources. Said state and local agencies are directed to fully participate to insure that their interests are considered by the department. The department shall, when funds are made available to it for such purposes, provide assistance grants to said state and local agencies for the purposes of financing activities directed to be performed by them under this subsection. [1971 ex.s. c 225 § 6.]

90.54.080 State to vigorously represent its interests before federal agencies, interstate agencies. The state shall vigorously represent its interest before water resource regulation, management, development, and use agencies of the United States, including among others the federal power commission, environmental protection agency, army corps of engineers, department of the interior, department of agriculture and the atomic energy commission, and of interstate agencies with regard to planning, licensing, relicensing, permit proposals, and proposed construction, development and utilization plans. Where federal or interstate agency plans, activities, or procedures conflict with state water policies, all reasonable steps available shall be taken by the state to preserve the integrity of this state's policies. [1971 ex.s. c 225 § 8.]

90.54.090 State, local governments, municipal corporations to comply with chapter. All agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter. [1987 c 505 § 82; 1977 c 75 § 95; 1971 ex.s. c 225 § 10.]

90.54.100 Department to evaluate needs for projects and alternative methods of financing—Report to legislature. The department of ecology shall as a matter of high priority evaluate the needs for water resource development projects and the alternative methods of financing of the same by public and private agencies, including financing by federal, state and local governments and combinations thereof. Such evaluations shall be broadly based and be included as a part of the comprehensive state water resources program relating to uses and management as defined in RCW 90.54.030. A report of the department relating to such evaluations, including any recommendations, shall be submitted to the legislature in accordance with *RCW 90.54.070. [1971 ex.s. c 225 § 11.]

*Reviser's note: RCW 90.54.070 was repealed by 1987 c 505 § 88.

90.54.110 Authority to secure and obtain benefits, including grants. The department of ecology is authorized to obtain the benefits including acceptance of grants, of any program of the federal government or any other source to carry out the provisions of this chapter and is empowered to take such actions as are necessary and appropriate to secure such benefits. [1971 ex.s. c 225 § 12.]

90.54.120 "Department", "utilize" and "utilization" defined. For the purposes of this chapter, unless the context is clearly to the contrary, the following definitions shall be used:

(1) "Department" means department of ecology.

(2) "Utilize" or "utilization" shall not only mean use of water for such long recognized consumptive or non-consumptive beneficial purposes as domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, thermal power production, mining, recreational, maintenance of wildlife and fishlife purposes, but includes the retention of water in lakes and streams for the protection of environmental, scenic, aesthetic and related purposes, upon which economic values have not been placed historically and are difficult to quantify. [1971 ex.s. c 225 § 13.]

90.54.130 Land use management policy modifications—Advisory recommendations. The department of ecology may recommend land use management policy modifications it finds appropriate for the further protection of ground and surface water resources in this state. Such advisory recommendations may be made to other state regulatory agencies, local governments, water systems, and other appropriate bodies. [1984 c 253 § 4.]

90.54.140 Protection of ground water aquifers if sole drinking water source. The legislature hereby declares that the protection of ground water aquifers which are the sole drinking water source for a given jurisdiction shall be of the uppermost priority of the state department of ecology, department of social and health services, and all local government agencies with jurisdiction over such areas. In administration of programs related to the disposal of wastes and other practices which may impact such water quality, the department of ecology, department of social and health services, and such affected local agencies shall explore all possible measures for the protection of the aquifer, including any appropriate incentives, penalties, or other measures designed to bring about practices which provide for the least impact on the quality of the ground water. [1984 c 253 § 5.]

90.54.150 Water supply projects—Cooperation with other agencies—Scope of participation. When feasible, the department of ecology shall cooperate with the United States and other public entities, including Indian tribes, in the planning, development, and operation of comprehensive water supply projects designed primarily to resolve controversies and conflicts over water use by increasing water quantity and improving water quality within a stream or river system, or other bodies of water, as well as to enhance opportunities for both instream and diversionary water uses within the system, and, in relation thereto, the department may:

(1) Participate with the federal government and other public entities in the planning, development, operation, and management of various phases of water projects hereafter authorized by congress;

(2) Provide rights to the use of public waters under the state's surface and ground water codes for these projects when the waters are available for allocation; and

(3) Provide financial assistance through grants and loans for projects when moneys are made available to the department for this assistance by other provisions of this code. [1979 ex.s. c 216 § 9.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.54.160 Department to report on dam safety. The department of ecology shall report to the legislature on the last working day of December of 1984, 1985, and 1986, and thereafter as deemed appropriate by the department, on dam facilities that exhibit safety deficiencies sufficient to pose a significant threat to the safety of life and property. The report shall identify the owner or owners of such facilities, detail the owner's ability and attitude towards correcting such deficiencies, and provide an estimate of the cost of correcting the deficiencies if a study has been completed. [1984 c 83 § 1.]

90.54.170 Electric generation facility—Evaluation of application to appropriate water. In addition to other requirements of this chapter, when the proposed water resource development project involves a new water supply combined with an electric generation facility where such electricity generated may be sold to an entity authorized by law to distribute electricity, the department shall evaluate and utilize, in connection with any application to appropriate water pursuant to the water code, chapter 90.03 RCW, sufficient information furnished by the project applicant regarding the need for the project, alternative means of serving the purposes of the project, the cumulative effects of the project and similar projects that are built, under construction or permitted in the relevant river basin or basins, the impact, if any, on flood control plans and an estimate of the impact, if any, of the sale of the project's electricity on the rates of utility customers of the Bonneville power administration. Such information shall be furnished at the project applicant's own cost and expense. [1985 c 444 § 6.]

Intent—Construction—Severability—1985 c 444: See notes following RCW 35.92.010.

90.54.900 Certain rights, authority, not to be affected by chapter. Nothing in this chapter shall affect any existing water rights, riparian, appropriative, or otherwise; nor shall it affect existing rights relating to the operation of any hydroelectric or water storage reservoir or related facility; nor shall it affect any exploratory work, construction or operation of a thermal power plant by an electric utility in accordance with the provisions of chapter 80.50 RCW. Nothing in this chapter shall enlarge or reduce the department of ecology's authority to regulate the surface use of waters of this state or structures on the underlying beds, tidelands or shorelands. [1971 ex.s. c 225 § 9.]

90.54.910 Short title. This chapter shall be known and may be cited as the "Water Resources Act of 1971". [1971 ex.s. c 225 § 14.]

Chapter 90.58

SHORELINE MANAGEMENT ACT OF 1971

Sections	
90.58.010	Short title.
90.58.020	Legislative findings—State policy enunciated—Use preference.
90.58.030	Definitions and concepts.
90.58.040	Program applicable to shorelines of the state.
90.58.050	Program as cooperative between local government and state—Responsibilities differentiated.
90.58.060	Timetable for adoption of initial guidelines—Public hearings, notice of.
90.58.070	Local governments to submit letters of intent—Department to act upon failure of local government.
90.58.080	Timetable for local governments to complete shoreline inventories and master programs.
90.58.090	Approval of master program or segments thereof, when—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program.
90.58.100	Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.
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90.58.120	Adoption of rules, programs, etc., subject to RCW 34-.04.025—Public hearings, notice of—Public inspection after approval or adoption.
90.58.130	Involvement of all persons and entities having interest, means.
90.58.140	Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—When permits not required—Approval when permit for variance or conditional use.
90.58.145	Substantial development permit—Structures at temporary ferry terminals—Hood Canal bridge—Removal of structures.
90.58.150	Selective commercial timber cutting, when.
90.58.160	Prohibition against surface drilling for oil or gas, where.
90.58.170	Shorelines hearings board—Established—Members—Chairman—Quorum for decision—Expenses of members.
90.58.175	Rules and regulations.
90.58.180	Appeals from granting, denying, or rescinding permits, procedure—Board to act, when—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court, procedure.
90.58.190	Review and adjustments to master programs.
90.58.200	Rules and regulations.
90.58.210	Court actions to insure against conflicting uses and to enforce—Civil penalty—Review.
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90.58.230	Violators liable for damages resulting from violation—Attorney's fees and costs.
90.58.240	Additional authority granted department and local governments.
90.58.250	Department to cooperate with local governments—Grants for development of master programs.
90.58.260	State to represent its interest before federal agencies, interstate agencies and courts.
90.58.270	Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority.
90.58.280	Application to all state agencies, counties, public and municipal corporations.

- 90.58.290 Restrictions as affecting fair market value of property.
- 90.58.300 Department as regulating state agency—Special authority.
- 90.58.310 Designation of shorelines of state-wide significance by legislature—Recommendation by director, procedure.
- 90.58.320 Height limitation respecting permits.
- 90.58.330 Study of shorelines of cities and towns submitted to legislature—Scope.
- 90.58.340 Use policies for land adjacent to shorelines, development of.
- 90.58.350 Nonapplication to treaty rights.
- 90.58.360 Existing requirements for permits, certificates, etc., not obviated.
- 90.58.370 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.
- 90.58.500 Exemption from this chapter for emergency recovery operations from Mt. St. Helens eruption authorized—Compliance with objectives required—Sediment retention structure exempt from RCW 90.58.030(3)(e)—Expiration of section.
- 90.58.510 Exemption—Hazardous waste remedial action.
- 90.58.550 Oil or natural gas exploration in marine waters—Definitions—Application for permit—Requirements—Review—Enforcement.
- 90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal.
- 90.58.600 Conformance with chapter 43.97 RCW required.
- 90.58.900 Liberal construction—1971 ex.s. c 286.
- 90.58.910 Severability—1971 ex.s. c 286.
- 90.58.911 Severability—1983 c 138.
- 90.58.920 Effective date—1971 ex.s. c 286.
- 90.58.930 Referendum to the people—1971 ex.s. c 286—Determining if act continues in force and effect.

Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.

90.58.010 Short title. This chapter shall be known and may be cited as the "Shoreline Management Act of 1971". [1971 ex.s. c 286 § 1.]

90.58.020 Legislative findings—State policy enunciated—Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines

in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and wetlands of the state shall be recognized by the department. Shorelines and wetlands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and wetlands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference

with the public's use of the water. [1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

90.58.030 Definitions and concepts. As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:
 (a) "Department" means the department of ecology;
 (b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: *Provided*, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of state-wide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: *Provided*, That any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of

master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: *Provided*, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on wetlands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences, the cost of which does not exceed two thousand five hundred dollars;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Any action commenced prior to December 31, 1982, pertaining to (A) the restoration of interim transportation services as may be necessary as a consequence of the destruction of the Hood Canal bridge, including, but not limited to, improvements to highways, development of park and ride facilities, and development of ferry terminal facilities until a new or reconstructed Hood Canal bridge is open to traffic; and (B) the reconstruction of a permanent bridge at the site of the original Hood Canal bridge. [1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

Severability—1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of this act to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.] The reference to "this act" refers to 1979 ex.s. c 84 which consists of this

section, the amendment to RCW 90.58.030 by 1979 ex.s. c 84, and to new sections RCW 43.21C.032 and 90.58.145.

90.58.040 Program applicable to shorelines of the state. The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter. [1971 ex.s. c 286 § 4.]

90.58.050 Program as cooperative between local government and state—Responsibilities differentiated. This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating and administering the regulatory program of this chapter. The department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policy and provisions of this chapter. [1971 ex.s. c 286 § 5.]

90.58.060 Timetable for adoption of initial guidelines—Public hearings, notice of. (1) Within one hundred twenty days from June 1, 1971, the department shall submit to local governments proposed guidelines consistent with RCW 90.58.020 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of state-wide significance.

(2) Within sixty days from receipt of such proposed guidelines, local governments shall submit to the department in writing proposed changes, if any, and comments upon the proposed guidelines.

(3) Thereafter and within one hundred twenty days from the submission of such proposed guidelines to local governments, the department, after review and consideration of the comments and suggestions submitted to it, shall resubmit final proposed guidelines.

(4) Within sixty days thereafter public hearings shall be held by the department in Olympia and Spokane, at which interested public and private parties shall have the opportunity to present statements and views on the proposed guidelines. Notice of such hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state.

(5) Within ninety days following such public hearings, the department at a public hearing to be held in Olympia shall adopt guidelines. [1971 ex.s. c 286 § 6.]

90.58.070 Local governments to submit letters of intent—Department to act upon failure of local government. (1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time

schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government. [1971 ex.s. c 286 § 7.]

90.58.080 Timetable for local governments to complete shoreline inventories and master programs. Local governments are directed with regard to shorelines of the state within their various jurisdictions as follows:

(1) To complete within eighteen months after June 1, 1971, a comprehensive inventory of such shorelines. Such inventory shall include but not be limited to the general ownership patterns of the lands located therein in terms of public and private ownership, a survey of the general natural characteristics thereof, present uses conducted therein and initial projected uses thereof;

(2) To develop, within twenty-four months after the adoption of guidelines as provided in RCW 90.58.060, a master program for regulation of uses of the shorelines of the state consistent with the guidelines adopted. [1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

90.58.090 Approval of master program or segments thereof, when—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program. Master programs or segments thereof shall become effective when adopted or approved by the department as appropriate. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(1) As to those segments of the master program relating to shorelines, they shall be approved by the department unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines. If approval is denied, the department shall state within ninety days from the date of submission in detail the precise facts upon which that decision is based, and shall submit to the local government suggested modifications to the program to make it consistent with said policy and guidelines. The local government shall have ninety days after it receives recommendations from the department to make modifications designed to eliminate the inconsistencies and to resubmit the program to the department for approval. Any resubmitted program shall take effect when and in such form and content as is approved by the department.

(2) As to those segments of the master program relating to shorelines of state-wide significance the department shall have full authority following review and evaluation of the submission by local government to develop and adopt an alternative to the local government's proposal if in the department's opinion the program submitted does not provide the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the submission by local government is not approved, the department shall suggest modifications to

the local government within ninety days from receipt of the submission. The local government shall have ninety days after it receives said modifications to consider the same and resubmit a master program to the department. Thereafter, the department shall adopt the resubmitted program or, if the department determines that said program does not provide for optimum implementation, it may develop and adopt an alternative as hereinbefore provided.

(3) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines. [1971 ex.s. c 286 § 9.]

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents. (1) The master programs provided for in this chapter, when adopted and approved by the department, as appropriate, shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but

not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values; and

(h) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3). [1971 ex.s. c 286 § 10.]

90.58.110 Development of program within two or more adjacent local government jurisdictions—Development of program in segments, when. (1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments

applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation. [1971 ex.s. c 286 § 11.]

90.58.120 Adoption of rules, programs, etc., subject to RCW 34.04.025—Public hearings, notice of—Public inspection after approval or adoption. All rules, regulations, master programs, designations, and guidelines, issued by the department, shall be adopted or approved in accordance with the provisions of RCW 34.04.025 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the approval or adoption by the department of a master program, or portion thereof, at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county auditor and city clerk. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines. [1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

90.58.130 Involvement of all persons and entities having interest, means. To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments. [1971 ex.s. c 286 § 13.]

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—When permits not required—Approval when permit for variance or conditional use. (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after

adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and the provisions of chapter 90.58 RCW.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) The local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that:

(a) A notice of such an application is published at least once a week on the same day of the week for two consecutive weeks in a legal newspaper of general circulation within the area in which the development is proposed; and

(b) Additional notice of such an application is given by at least one of the following methods:

(i) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(iii) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive a copy of the final order concerning an application as expeditiously as possible after the issuance of the order, may submit the comments or requests for orders to the local government within thirty days of the last date the notice is to be published pursuant to subsection (a) of this subsection. The local government shall forward, in a timely manner following the issuance of an order, a copy of the order to each person who submits a request for the order.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person

may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until thirty days from the date the final order was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within thirty days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of the SR 90 (I-90) bridges across Lake Washington, the construction may begin after thirty days from the date of filing;

(b) If a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within thirty days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.04 RCW, the permittee may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction may begin pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would not involve a significant, irreversible damaging of the environment, the court may allow the permittee to begin the construction pursuant to the approved or revised permit as the court deems appropriate. The court may require the permittee to post bonds, in the name of the local government that issued the permit, sufficient to remove the substantial development or to restore the environment if the permit is ultimately disapproved by the courts, or to alter the substantial development if the alteration is ultimately ordered by the courts. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If a permit is granted by the local government and the granting of the permit is appealed directly to the superior court for judicial review pursuant to the proviso in RCW 90.58.180(1), the permittee may request the court to remand the appeal to the shorelines hearings board, in which case the appeal shall be so remanded and construction pursuant to such a permit shall be governed by the provisions of subsection (b) of this subsection or may otherwise begin after review proceedings before the

hearings board are terminated if judicial review is not thereafter requested pursuant to chapter 34.04 RCW;

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any ruling on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (12) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (12) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) A permit shall not be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government before April 1, 1971, if:

(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969; and

(b) The development is completed within two years after June 1, 1971.

(11) The applicable state agency or local government is authorized to approve a final plat with respect to shorelines of the state included within a preliminary plat approved after April 30, 1969, and before April 1, 1971: *Provided*, That any substantial development within the platted shorelines of the state is authorized by a permit granted pursuant to this section, or does not require a permit as provided in subsection (10) of this section, or does not require a permit because of substantial development occurred before June 1, 1971.

(12) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval. [1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

90.58.145 Substantial development permit—Structures at temporary ferry terminals—Hood Canal bridge—Removal of structures. Not later than July 1, 1981, the department of transportation or any affected private property owner, or both, may apply for a substantial development permit in connection with any dolphin, wingwall, barge, pier, or similar structure constructed or assembled at a temporary ferry terminal for the purpose of providing interim transportation services necessary as a consequence of the destruction of the Hood Canal bridge. The permit shall be processed in accordance with this chapter. Following a denial of a permit and the exhaustion of all subsequent appeals, or within six months after the new or reconstructed Hood Canal bridge is open to traffic, whichever occurs later, the department shall remove all dolphins, wingwalls, barges, piers, and similar structures constructed or assembled at the temporary ferry terminals. If a permit is granted, such structures may remain in place. [1979 ex.s. c 84 § 4.]

Intent—1980 c 2; 1979 ex.s. c 84: See note following RCW 90.58.030.

90.58.150 Selective commercial timber cutting, when. With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of state-wide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: *Provided*, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: *Provided further*, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. [1971 ex.s. c 286 § 15.]

90.58.160 Prohibition against surface drilling for oil or gas, where. Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark. [1971 ex.s. c 286 § 16.]

90.58.170 Shorelines hearings board—Established—Members—Chairman—Quorum for decision—Expenses of members. A shorelines hearings board sitting as a quasi judicial body is hereby established within the environmental hearings office under RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the state land commissioner or his designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. A decision must be agreed to by at least four members of the board to be final. The members of the shorelines appeals board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060. [1979 ex.s. c 47 § 6; 1971 ex.s. c 286 § 17.]

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

90.58.175 Rules and regulations. The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board. [1973 1st ex.s. c 203 § 3.]

90.58.180 Appeals from granting, denying, or rescinding permits, procedure—Board to act, when—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court, procedure. (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 as now or hereafter amended may seek review from the shorelines hearings board by filing a request for the same within thirty days of the date of filing as defined in RCW 90.58.140(6) as now or hereafter amended.

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: *Provided*, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may

intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section. The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired, unless such review is to begin within thirty days of such scheduling. If at the end of the thirty day period for certification neither the department nor the attorney general has certified a request for review, the hearings board shall remove the request from its review schedule.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines hearings board and the appropriate local government within thirty days from the date the final order was filed as provided in RCW 90.58.140(6) as now or hereafter amended.

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter 34.04 RCW.

(4) Local government may appeal to the shorelines hearings board any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

If the board determines that said rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department by the local government; or

(e) Was not adopted in accordance with required procedures;

the board shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new rule, regulation, or guideline. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect.

(5) Rules, regulations, and guidelines shall be subject to review in superior court, if authorized pursuant to

RCW 34.04.070: *Provided*, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section is filed within three months after the date of final decision by the shorelines hearings board. [1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.190 Review and adjustments to master programs. (1) The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. Any adjustments proposed by a local government to its master program shall be forwarded to the department for review. The department shall approve, reject, or propose modification to the adjustment. If the department either rejects or proposes modification to the master program adjustment, it shall provide substantive written comments as to why the proposal is being rejected or modified.

(2) Any local government aggrieved by the department's decision to approve, reject, or modify a proposed master program or master program adjustment may appeal the department's decision to the shorelines hearings board. In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program adjustment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's adjustment in light of the policy of RCW 90.58.020 and the applicable guidelines. In an appeal relating to shorelines of state-wide significance, the board shall uphold the decision by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines. Review by the hearings board shall be considered a contested case under chapter 34.04 RCW. The aggrieved local government shall have the burden of proof in all such reviews. Whenever possible, the review by the hearings board shall be heard within the county where the land subject to the proposed master program or master program adjustment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to the superior court of Thurston county.

(3) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program adjustment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program adjustment. [1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.200 Rules and regulations. The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter. [1971 ex.s. c 286 § 20.]

90.58.210 Court actions to insure against conflicting uses and to enforce—Civil penalty—Review. (1) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board. [1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.220 General penalty. In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: *Provided*, That the fine for the third and all subsequent violations in any five-year period shall be not less than

five hundred nor more than ten thousand dollars: *Provided further*, That fines for violations of RCW 90.58-.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. [1983 c 138 § 3; 1971 ex.s. c 286 § 22.]

90.58.230 Violators liable for damages resulting from violation—Attorney's fees and costs. Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party. [1971 ex.s. c 286 § 23.]

90.58.240 Additional authority granted department and local governments. In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees. [1972 ex.s. c 53 § 1; 1971 ex.s. c 286 § 24.]

90.58.250 Department to cooperate with local governments—Grants for development of master programs. The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs. Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

No grant shall be made in an amount in excess of the recipient's contribution to the estimated cost of such program. [1971 ex.s. c 286 § 25.]

90.58.260 State to represent its interest before federal agencies, interstate agencies and courts. The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies. [1971 ex.s. c 286 § 26.]

90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: *Provided*, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights. [1971 ex.s. c 286 § 27.]

90.58.280 Application to all state agencies, counties, public and municipal corporations. The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them. [1971 ex.s. c 286 § 28.]

90.58.290 Restrictions as affecting fair market value of property. The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property. [1971 ex.s. c 286 § 29.]

90.58.300 Department as regulating state agency—Special authority. The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter. [1971 ex.s. c 286 § 30.]

90.58.310 Designation of shorelines of state-wide significance by legislature—Recommendation by director, procedure. Additional shorelines of the state shall be designated shorelines of state-wide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have state-wide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of state-wide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county. [1971 ex.s. c 286 § 31.]

90.58.320 Height limitation respecting permits. No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served. [1971 ex.s. c 286 § 32.]

90.58.330 Study of shorelines of cities and towns submitted to legislature—Scope. The department of ecology, the attorney general, and the harbor line commission are directed as a matter of high priority to undertake jointly a study of the locations, uses and activities, both proposed and existing, relating to the shorelines of the cities, and towns of the state and submit a report which shall include but not be limited to the following:

(1) Events leading to the establishment of the various harbor lines pertaining to cities of the state;

(2) The location of all such harbor lines;

(3) The authority for establishment and criteria used in location of the same;

(4) Present activities and uses made within harbors and their relationship to harbor lines;

(5) Legal aspects pertaining to any uncertainty and inconsistency; and

(6) The relationship of federal, state and local governments to regulation of uses and activities pertaining to the area of study.

The report shall be submitted to the legislature not later than December 1, 1972. [1971 ex.s. c 286 § 33.]

90.58.340 Use policies for land adjacent to shorelines, development of. All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]

90.58.350 Nonapplication to treaty rights. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party. [1971 ex.s. c 286 § 35.]

90.58.360 Existing requirements for permits, certificates, etc., not obviated. Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government. [1971 ex.s. c 286 § 36.]

90.58.370 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited. All state and local agencies with authority under this chapter to issue permits or other authorizations for emergency water withdrawal and facilities pursuant to RCW 43.83B.300 through 43.83B.345 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1987 c 343 § 5.]

Severability—1987 c 343: See note following RCW 43.83B.300.

90.58.500 Exemption from this chapter for emergency recovery operations from Mt. St. Helens eruption authorized—Compliance with objectives required—Sediment retention structure exempt from RCW 90.58.030(3)(e)—Expiration of section. Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210 may be exempted by the applicable county legislative authority from the requirements of the Shoreline Management Act of 1971, chapter 90.58 RCW, for operations within such county: *Provided*, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem.

The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology. The county shall comply with all substantive objectives of this chapter and shall consult with the department of ecology in the planning process.

The sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers is exempt from the substantial development permit requirement under RCW 90.58.030(3)(e).

This section shall expire on June 30, 1990. [1985 c 307 § 9; 1983 1st ex.s. c 1 § 3; 1982 c 7 § 4.]

Severability—1983 1st ex.s. c 1: See note following RCW 43.01.200.

Severability—1982 c 7: See note following RCW 36.01.150.

90.58.510 Exemption—Hazardous waste remedial action. A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.105B RCW is exempt from the procedural and substantive requirements of this chapter. [1987 3rd ex.s. c 2 § 33.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

90.58.550 Oil or natural gas exploration in marine waters—Definitions—Application for permit—Requirements—Review—Enforcement. (1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section. [1983 c 138 § 1.]

90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal. (1) A person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and

payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [1983 c 138 § 2.]

90.58.600 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 10.]

90.58.900 Liberal construction—1971 ex.s. c 286. This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1971 ex.s. c 286 § 37.]

90.58.910 Severability—1971 ex.s. c 286. If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1971 ex.s. c 286 § 40.]

90.58.911 Severability—1983 c 138. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 138 § 4.]

90.58.920 Effective date—1971 ex.s. c 286. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date. [1971 ex.s. c 286 § 41.]

90.58.930 Referendum to the people—1971 ex.s. c 286—Determining if act continues in force and effect. This 1971 act constitutes an alternative to Initiative 43. The secretary of state is directed to place this 1971 act on the ballot in conjunction with Initiative 43 at the next ensuing regular election.

This 1971 act shall continue in force and effect until the secretary of state certifies the election results on this 1971 act. If affirmatively approved at the ensuing regular general election, the act shall continue in effect thereafter. [1971 ex.s. c 286 § 42.]

Reviser's note: Chapter 90.58 RCW [1971 ex.s. c 286] was approved and validated at the 1972 general election as Alternative Measure 43B.

Chapter 90.62

ENVIRONMENTAL COORDINATION PROCEDURES ACT

Sections

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90.62.907	Severability—1973 1st ex.s. c 185.
90.62.908	Severability—1977 c 54.

90.62.010 Legislative finding—Purposes. (1) It is the sense of the legislature that the heavy burdens placed upon persons proposing to undertake certain types of projects in this state through requirements to obtain numerous permits and related documents from various state and local agencies are undesirable and should be alleviated. The legislature further finds that present methods for obtaining public views in relation to applications to state and local agencies pertaining to these projects are cumbersome and place undue hardships on members of the public thereby thwarting the public's ability to present such views.

(2) The purposes of this chapter are to:

(a) Provide for an optional procedure to assist those who, in the course of satisfying the requirements of state and local government prior to undertaking a project which contemplates the use of the state's air, land, or water resources, must obtain a number of permits, by establishing a mechanism in state government which will coordinate administrative decision-making procedures, and related quasi judicial and judicial review, pertaining to such documents.

(b) Provide to members of the public a better and easier opportunity to present their views comprehensively on proposed uses of natural resource and related

environmental matters prior to the making of decisions on such uses by state or local agencies.

(c) Provide to members of the public who desire to carry out the aforementioned projects within the state of Washington a greater degree of certainty in terms of permit requirements of state and local government and when final decisions about the permits would be made.

(d) Provide better coordination and understanding between state and local agencies in the administration of the various programs relating to air, water, and land resources.

(e) Establish the opportunity for members of the public to obtain information pertaining to requirements of federal and state law which must be satisfied prior to undertaking a project in the state. [1982 c 179 § 1; 1977 c 54 § 1; 1973 1st ex.s. c 185 § 1.]

90.62.020 Definitions. For purposes of this chapter the following words mean, unless the context clearly dictates otherwise:

(1) "Board" means the pollution control hearings board.

(2) "Department" means the department of ecology.

(3) "Local government" means a county, city or town.

(4) "Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to any regulatory or management program related to the protection, conservation, or use of, or interference with, the natural resources of land, air or water in the state, which is required to be obtained from a state agency prior to constructing or operating a project in the state of Washington. Permit shall also mean a substantial development permit under RCW 90.58.140 and any permit, required by a local government for a project, that the local government has chosen to process pursuant to RCW 90.62.100(2) as now or hereafter amended. Nothing in this chapter shall relate to a permit issued by the department of labor and industries or by the utilities and transportation commission; nor to the granting of proprietary interests in publicly owned property such as sales, leases, easements, use permits and licenses.

(5) "Person" means any individual, municipal, public, or private corporation, or other entity however denominated, including a state agency and county.

(6) "Processing" and "processing of applications" mean the entire process to be followed in relation to the making of decisions on an application for a permit and review thereof as provided in RCW 90.62.040 through 90.62.080.

(7) "Project" means any new activity or any expansion of or addition to an existing activity, fixed in location, for which permits are required prior to construction or operation from (a) two or more state agencies as defined in subsection (8) of this section, or (b) one or more state agencies and a local government, if the local government is processing permits or requests for variances or rezones pursuant to the procedure established by the provisions of this chapter, as provided by RCW

90.62.100(2) as now or hereafter amended. Such construction or operation may include, but need not be limited to, industrial and commercial operations and developments. For the purpose of part (a) of this subsection, the submission of plans and specifications for a hydraulic project or other work to the departments of fisheries and *game pursuant to RCW 75.20.100 shall be considered to be an application for a permit required by one state agency.

(8) "State agency" means any state department, commission, board or other agency of the state however titled. For the limited purposes of this chapter only "state agency" shall also mean (a) any local or regional air pollution control authority established under chapter 70.94 RCW and (b) any local government when said government is acting in its capacity as a decision maker on an application for a permit pursuant to RCW 90.58.140. [1977 c 54 § 2; 1973 1st ex.s. c 185 § 2.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

90.62.030 Thermal power plants exempt from chapter. Nothing in this chapter shall apply to a plant or project which is required to be the subject of a certification by the governor pursuant to chapter 80.50 RCW. [1973 1st ex.s. c 185 § 3.]

90.62.040 Master application for proposed project—Contents—Notice to state agencies—Agency permit forms sent applicant—Return of forms to department with local government certification. (1) Any person proposing a project may submit a master application to the department requesting the issuance of all permits necessary prior to the construction and operation of the project in the state of Washington. The master application shall be on a form furnished by the department and shall contain precise information as to the location of the project, and shall describe the nature of the project including any discharges of wastes proposed therefrom and any uses of, or interferences with, natural resources contemplated.

(2) Upon receipt of a properly completed master application, the department shall immediately notify in writing each state agency having a possible interest in the master application arising from requirements pertaining to a permit program under its jurisdiction. The notification from the department shall be accompanied by a copy of the master application together with the date by which the agency shall respond to the notice. Each notified agency shall respond in writing to the department within the specified date, not exceeding fifteen days from receipt, as determined by the department, advising (a)(i) whether the agency does or does not have an interest in the master application, and (a)(ii) if the response to (a)(i) of this subsection is affirmative, the permit program or programs under the agency's jurisdiction to which the project described in the master application is pertinent, and whether, in relation to the master application, a public hearing as provided in RCW 90.62.050 and 90.62.060 would or would not be of

value taking into consideration the overall public interest. Each notified state agency which (b)(i) responds within the specified date that it does not have an interest in the master application or (b)(ii) does not respond as required above within the specified date, shall not subsequently require a permit of the applicant for the project described in the master application; provided the bar to requiring a permit subsequently shall not be applicable if the master application provided the notified agency contained false, misleading, or deceptive information, or other information, or lack thereof, which would reasonably lead an agency to misjudge its interest in a master application.

(3) The department shall send application forms relating to permit programs identified in affirmative responses under subsection (2) of this section to the applicant within five working days of the date specified by the department pursuant to subsection (2) of this section with a direction to complete and return them to the department within a reasonable time as specified by the department.

(4) When such applications, properly completed, have been returned to the department, each of the applications shall be transmitted to the appropriate state agency for the performance of its responsibilities of decision making in accordance with the procedures of this chapter. No such completed applications shall be accepted by the department for transmittal unless they are accompanied by (a) the certification of local government provided for in RCW 90.62.100 as now or hereafter amended, or (b) a statement of the local government indicating that such certification would require rezoning, the granting of a variance or issuance of a conditional use permit and the local government has chosen to utilize the procedures provided by this chapter to process the request for the rezoning or variance or the application for the conditional use permit as provided by RCW 90.62.100(2) as now or hereafter amended.

(5) For the purpose of establishing priority dates upon water right permits and certificates issued pursuant to rulings on applications under chapters 90.03 and 90.44 RCW and processed under this chapter, the priority date shall be the date of submitting the master application to the department or the county office as provided in RCW 90.62.120(2). [1977 c 54 § 3; 1973 1st ex.s. c 185 § 4.]

90.62.050 Notice of proposed project—Publication—Contents—Public hearing. (1) The department, within a reasonable time after transmittal under RCW 90.62.040(4), shall cause a notice to be published at the applicant's expense once each week on the same day of the week for two consecutive weeks in a newspaper of general circulation within each county in which the project is proposed to be constructed or operated. The notice shall describe the nature of the master application including, with reasonable specificity, the project proposed, its location, the various permits applied for, and the agency having jurisdiction over each such permit. Except as provided in RCW 90.62.050(2), the notice shall also state the time and place of the public hearing (to be held not less than fifteen days after the

date of last publication of the notice). It shall further state that a copy of the master application and a copy of all permit applications for the project are available for public inspection in the office for environmental permit applications of each county in which the project is proposed to be constructed or operated, as well as at the Olympia office and appropriate regional office of the department, together with such other locations as the department may designate.

(2) If the responses received by the department from state agencies under RCW 90.62.040(2) unanimously state the position that a public hearing in relation to a master application would not be of value taking into consideration the overall public interest, and the department, after a careful evaluation, taking into consideration all interests involved, including the opportunities for members of the public to present views, concludes likewise, the provisions of subsection (1) of this section pertaining to the time and place of a public hearing shall not be included in the notice. In place thereof the notice shall state that members of the public may present relevant views and supporting materials in writing to the department in relation to any of the permits applied for within twenty days after the last date of publication of the notice in a newspaper. [1977 c 54 § 4; 1973 1st ex.s. c 185 § 5.]

90.62.060 Public hearing—Procedure—Agency participation—Final decisions. (1) Except as provided in RCW 90.62.050(2), prior to any final decision on any permit applications relating to a project subject to the procedures of this chapter, a public hearing shall be held in the county in which all or a major part of the proposed project is to be constructed or operated, such hearing to be held pursuant to notice made under RCW 90.62.050(1). At any such hearing the applicant may submit any relevant information and material in support of his applications, and members of the public may present relevant views and supporting materials in relation to any or all of the applications being considered.

(2) Each agency having an application for a permit before it as described in the notice in RCW 90.62.050(1) shall be represented at the public hearing by its chief administrative officer or his designee. The director of the department, or a hearing officer duly appointed by him, shall chair the hearing; however, the representative of any agency (other than the department) within whose jurisdiction a specific application lies shall conduct the portion of the hearing pertaining to submission of information, views, and supporting materials which are relevant to that application. The chairman may, when appropriate, continue a hearing from time to time and place to place. The hearing shall be recorded in any manner suitable for transcription as determined by the department.

(3) No provisions of chapter 34.04 RCW shall apply to the hearing provided for by this section. Said hearing shall be conducted for the purpose of obtaining information for the assistance of the agencies but shall not be considered a trial or adversary proceeding.

(4) Upon completion of the public hearing the chairman, after consultation with the agency representatives, shall establish the date by which all agencies shall forward their final decisions on applications before them to the department: *Provided*, That this date shall not be more than one hundred twenty days after completion of the public hearing, unless the chairman and the applicant mutually agree upon a later date: *Provided further*, That subsequent to the hearing the chairman and the applicant may agree, prior to the expiration of the one-hundred twenty day period or the agreed upon later date, that the date for agencies to forward their final decisions may be extended. If such agreement is reached, the affected agencies shall be notified in writing by the chairman. Failure of an agency to forward a decision by the established date constitutes unconditional approval by that agency of the application. Every final decision shall set forth the basis for the conclusion reached together with a final order denying the application for a permit or granting it, subject to such conditions of approval as the deciding agency may have power to impose.

(5) In situations where a notice is provided pursuant to RCW 90.62.050(2) and no public hearing is conducted, the department shall, after twenty days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency having an application for a permit before it as described in the notice. Concurrently therewith, the department shall notify each agency, in writing, of the date by which final decisions on applications shall be forwarded to the department: *Provided*, That this date shall not be more than one hundred fifty days after the last required publication of notice in the newspaper unless the department and the applicant mutually agree upon a later date: *Provided further*, That subsequent to the last required publication, the chairman and the applicant may agree, prior to the expiration of the one-hundred fifty day period or the agreed upon later date, that the date for agencies to forward their final decisions may be extended. If such agreement is reached, the affected agencies shall be notified in writing by the chairman. Failure of an agency to forward a decision by the established date shall constitute unconditional approval by that agency of the application. Each such final decision shall consist of the same contents as provided for final decisions in RCW 90.62.060(4).

(6) As soon as all final decisions are received by the department from the various participating agencies, as provided in RCW 90.62.060(4) and (5), the department shall incorporate them, without modification, into one document and transmit the same to the applicant either personally or by registered mail.

(7) Each agency having jurisdiction to approve or deny an application for a permit shall have continuing power as vested in it prior to enactment of this chapter to make such determinations. Nothing in RCW 90.62.030 through 90.62.060 shall lessen or reduce such powers, and such sections shall modify only the procedures to be followed in the carrying out of such powers.

(8) An agency may in the performance of its responsibilities of decision making under this chapter, request or receive additional information from an applicant and others prior or subsequent to a public hearing as necessary to the performance thereof. [1982 c 179 § 2; 1977 c 54 § 5; 1973 1st ex.s. c 185 § 6.]

90.62.070 Withdrawal of agency from participation.

A state agency responding affirmatively as provided in RCW 90.62.040(2) may withdraw from further participation in the processing provided in RCW 90.62.040, 90.62.050, and 90.62.060 at any time, by written notification to the director, if it subsequently appears to such state agency that it has no permit programs under its jurisdiction applicable to the project. [1973 1st ex.s. c 185 § 7.]

90.62.080 Board review of agency final decision, procedure—Appeal of local government decision—Judicial review.

(1) Any person aggrieved by any final decision of a state agency, as defined in RCW 90.62.020(8) as now or hereafter amended, contained in the document issued by the department pursuant to RCW 90.62.060(6) may obtain review thereof by filing a request, with the board, within thirty days of the transmittal under RCW 90.62.060(6) by the department of ecology of the document, for all final decisions other than a final decision relating to the granting or denial of a substantial development permit pursuant to RCW 90.58.140 in which case the filing of such request shall be with the shorelines hearings board. The board shall review all final decisions other than a final decision on a substantial development permit which shall be reviewed by the shorelines hearings board. In the event a request for review includes a final decision involving a substantial development permit and other permits, there shall be single staged hearing of the permits by the boards. The board shall be authorized to adopt rules and regulations implementing such staged hearings and the filing of requests so as to eliminate all unnecessary duplication.

(2) Any hearing held pursuant to this section by the pollution control hearings board or the shorelines hearings board or by the boards jointly shall be a de novo quasi judicial hearing and shall be conducted pursuant to the procedures provided in chapter 34.04 RCW.

(3) The board or boards shall make written findings of fact based upon a preponderance of the evidence and shall prepare written conclusions of law and an order, which order may affirm with or without condition, remand for further proceedings, or reverse the appealed decision in accordance with the findings and conclusions.

(4) Judicial review of decisions of the boards shall be controlled by RCW 43.21B.180 through 43.21B.190 except as they relate to decisions pertaining to substantial development permits under RCW 90.58.140 which shall be controlled by RCW 90.58.180.

(5) (a) Any person aggrieved by and desiring to appeal any final decision of a local government contained in the document issued by the department pursuant to RCW 90.62.060(6) as now or hereafter amended shall

obtain review thereof in the same manner as would apply had the local government not utilized the procedures provided by this chapter.

(b) The provisions of subsection (5)(a) of this section shall not apply to a decision concerning any permit required by a "state agency" as that term is defined in RCW 90.62.020(8) as now or hereafter amended. [1987 c 109 § 156; 1977 c 54 § 6; 1973 1st ex.s. c 185 § 8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.62.090 Application, scope, construction of chapter—Continuation of fee schedules—Collection.

(1) Notwithstanding any other statutes relating to the processing of application for permits, the procedures, including timing requirements and approval requirements related thereto, set forth in this chapter shall be exclusive in relation to applications for permits filed pursuant to RCW 90.62.040. The procedures of this chapter shall be in lieu of any procedures otherwise provided by statute, existing or hereafter enacted, to be followed by an agency in ruling upon an application for a permit for a project under this chapter.

(2) The procedures of this chapter are applicable only to projects as defined in RCW 90.62.020(7) and only through the completion of final decisions under RCW 90.62.060 and of review proceedings of RCW 90.62.080 and any ancillary proceedings. This chapter shall have no applicability to any applications for permit renewals, amendments, extensions, or other similar documents, or for replacing permits which are required subsequent to the completion of the decisions and proceedings under RCW 90.62.060 and 90.62.080 and any ancillary proceedings. For purposes of this section "ancillary proceedings" shall mean all proceedings, quasi judicial and judicial, held pursuant to any order of remand or similar order by the board or a court in relation to a final decision of an agency made hereunder and held in response to the order of remand or similar order.

(3) Fee schedules previously and expressly established or authorized by statute in relation to any application for a permit shall continue to be applicable even though processed under this chapter. The department shall collect such fees and forward them to the appropriate agency. [1977 c 54 § 7; 1973 1st ex.s. c 185 § 9.]

90.62.100 Compliance with local zoning ordinances and plans—Scope—Certification—Other laws not affected.

(1) No completed applications returned to the department of ecology pursuant to RCW 90.62.040(3) as now or as hereafter amended shall be accepted by the department for transmittal pursuant to RCW 90.62.040 as now or hereafter amended unless they are accompanied by a certification from the pertinent local government that the project is in compliance with all zoning ordinances, and associated comprehensive plans, administered by said local government relating to the location of the project or are accompanied by the statement described in RCW 90.62.040(4)(b) as now or hereafter amended: *Provided*, That if the local government has no

such ordinances or plans the certification from local government shall so state and issue. For purposes of this section master programs of chapter 90.58 RCW are not zoning ordinances administered by local government. Local governments are authorized to accept applications for certifications as provided in this section and are directed to rule upon the same expeditiously to insure the purposes of this chapter are accomplished fully. Upon certification, the local government may not change such zoning ordinances so as to affect the proposed project until the procedures of this chapter, including any board or court reviews, are completed. The provisions of the state environmental policy act relating to the preparation of detailed impact statements shall not be applicable to the action approving or denying certifications authorized in this section.

(2) (a) Upon receiving an application for certification for a project pursuant to subsection (1) of this section, the local government may, at its discretion, choose to process, pursuant to the procedures provided by this chapter, requests for variances or rezones or applications for conditional use permits or any other permits or any combination thereof that may be required by the local government for the project described on a master application. The procedures established by this chapter shall satisfy the procedural requirements for any requests or applications so processed.

(b) The provisions of subsection (2)(a) of this section shall not apply to any permit required by a "state agency" as that term is defined in RCW 90.62.020(8) as now or hereafter amended.

(3) Nothing in this chapter shall modify in any manner whatsoever the applicability or inapplicability of any land use regulation statutes or local zoning ordinances to lands of any state agency.

(4) Approval of an application for certification as provided in this section shall not eliminate any requirements of the Shoreline Management Act of 1971 or any other statutes administered by a local government. A ruling by local government denying an application for certification shall not be appealable under this chapter: *Provided*, That the denial of an application for certification pursuant to subsection (1) of this section shall not preclude the applicant from filing a permit application under any other available statute or procedure. [1977 c 54 § 8; 1973 1st ex.s. c 185 § 10.]

90.62.110 Rules—Authority—Cooperation enjoined. (1) The department shall adopt such rules as are appropriate to carry out the provisions of this chapter. This authority includes, but is not limited to, the following subjects and sections or subsections of this chapter:

(a) Master application procedures under RCW 90.62.040(1) and (2).

(b) Application procedures under RCW 90.62.040(3).

(c) Notice procedures under RCW 90.62.050.

(d) Public hearing and final decision procedures under RCW 90.62.060(1), (2), and (3).

(e) A program, and procedures, including time requirements relating thereto, to guide local governments in the implementation of RCW 90.62.100(1).

(f) A listing of the various types of permits covered by this chapter together with the state agency issuing each such permit, and the statutory authority providing for such issuance.

(2) State agencies and local governments shall cooperate fully in the preparation implementation of rules authorized under this section and in otherwise carrying out the provisions of this chapter.

(3) Consistent with the procedural concepts for the processing of applications for permits established in RCW 90.62.040 through 90.62.060, the department of ecology may, by rule, establish a permit application processing procedure which may be used, at the request of an applicant, in relation to two or more permit programs administered solely by the department of ecology. [1973 1st ex.s. c 185 § 11.]

90.62.120 Permit requirements information centers—Offices for environmental permit applications—Procedures. (1) The department shall establish permit requirements information centers in its office at Olympia and in all of its regional offices which shall provide information to the public, in readily understandable form, pertaining to the requirements of federal, state, and local governments for permits which must be acquired before initiating various types of activities and projects proposed in the state with special emphasis being given to those permits which apply to the use of land, air, and water resources.

(2) There shall be designated by each county, in a place convenient to members of the general public an office or offices for environmental permit applications. It shall be the responsibility of said office to provide a master application as provided in this chapter to any person requesting the same. It shall further be the responsibility of the office to provide reasonable assistance in preparation of an application to any person requesting the same and to accept for transmission to the department completed master applications. All completed master applications received by the county office shall be submitted to the department for processing as provided in RCW 90.62.040 through 90.62.060. Filing of a master application with the county office shall constitute a submission to the department of ecology within the meaning of RCW 90.62.040(1). The department shall provide full information, forms, instructions, and other assistance relating to master applications and the other features of the program of this chapter to each county office to insure the provisions of this section are made fully effective in serving those desiring to file master applications under this chapter. [1973 1st ex.s. c 185 § 12.]

90.62.130 Modifications to master application—Authorized—Rules to set forth guidelines, limitations. It is anticipated that in processing permits as provided by this chapter the participating agencies may identify modifications to the project described in a master application, and subsequently completed individual applications submitted pursuant to RCW 90.62.040 as now or

hereafter amended, which modifications would be necessary to satisfy the permit requirements of all of the participating agencies. The department of ecology shall, by rules and regulations adopted pursuant to chapter 34.04 RCW, establish guidelines for determining the extent to which such modifications can be approved under the original application without the applicant's having to re-submit a master application. Such guidelines shall require, among other provisions, that an applicant resubmit a master application if the modifications proposed by the participating agencies to the applicant's proposed project would have required one or more of the participating agencies to require the applicant to submit a new application reflecting such modifications if the application for the permit had not been submitted under this chapter. [1977 c 54 § 9.]

90.62.900 Report to legislature. The department, after consultation with other state agencies and local governments, shall submit to the legislature by January 1, 1975, a report setting forth the results of the experience under this chapter together with any recommendations and views pertaining to ways and means of improving the procedures and otherwise satisfying the purposes of this chapter. [1973 1st ex.s. c 185 § 13.]

90.62.901 Conflicts with federal requirements—Compliance with federal laws. (1) If any part of this chapter shall be found in conflict with federal requirements which are a condition precedent to the allocation of federal funds authorized to the state, such conflicting part of this chapter is declared to be inoperative to the limited extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

(2) The department of ecology, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in this chapter. [1973 1st ex.s. c 185 § 14.]

90.62.904 Liberal construction. The rule of strict construction shall have no application to this chapter and it shall be liberally construed in order to carry out its purposes. [1973 1st ex.s. c 185 § 15.]

90.62.905 Short title. This 1973 act shall be known as the Environmental Coordination Procedures Act of 1973. [1973 1st ex.s. c 185 § 16.]

90.62.906 Effective date—1973 1st ex.s. c 185. This 1973 act shall take effect on January 1, 1974, except that the department, state agencies, and local governments are authorized to take such steps as are necessary prior to that date to insure that this 1973 act is properly implemented on its effective date. [1973 1st ex.s. c 185 § 18.]

90.62.907 Severability—1973 1st ex.s. c 185. If any provision of this 1973 act or its application to any

person or circumstance is held invalid the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 185 § 19.]

90.62.908 Severability—1977 c 54. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 c 54 § 10.]

Chapter 90.66

FAMILY FARM WATER ACT

Sections	
90.66.010	Short title.
90.66.020	Prior existing rights to withdraw and use public waters not affected.
90.66.030	Public policy enunciated—Maximum benefit from use of public waters—Irrigation.
90.66.040	Definitions.
90.66.050	Classes of permits for withdrawal of public waters for irrigation purposes—Conditions—Requirements.
90.66.060	Withdrawal of water under family farm permit—Conditioned upon complying with definition of family farm—Suspension of permit, procedures, time.
90.66.070	Transfer of property entitled to water under permit—Rights—Requirements.
90.66.080	Rules and regulations—Decisions, review.
90.66.900	Liberal construction—Initiative Measure No. 59.
90.66.910	Severability—Initiative Measure No. 59.

90.66.010 Short title. This chapter shall be known and may be cited as the "Family Farm Water Act". [1979 c 3 § 1 (Initiative Measure No. 59, approved November 8, 1977).]

90.66.020 Prior existing rights to withdraw and use public waters not affected. Nothing in this chapter shall affect any right to withdraw and use public waters if such rights were in effect prior to *the effective date of the act, and nothing herein shall modify the priority of any such existing right. [1979 c 3 § 2 (Initiative Measure No. 59, approved November 8, 1977).]

***Reviser's note:** "The effective date of the act" [1979 c 3 (Initiative Measure No. 59)], consisting of RCW 90.66.010 through 90.66.080, 90.66.900, and 90.66.910, is "thirty days after the election at which it is approved" as mandated by Article II, section 1(d) of the Washington Constitution. Initiative Measure No. 59 was approved by the voters at the election November 8, 1977, and was so certified by the governor on December 8, 1977.

90.66.030 Public policy enunciated—Maximum benefit from use of public waters—Irrigation. The people of the state of Washington recognize that it is in the public interest to conserve and use wisely the public surface and ground waters of the state in a manner that will assure the maximum benefit to the greatest possible number of its citizens. The maximum benefit to the greatest number of citizens through the use of water for the irrigation of agricultural lands will result from providing for the use of such water on family farms. To assure that future permits issued for the use of public

waters for irrigation of agricultural lands will be made on the basis of deriving such maximum benefits, in addition to any other requirements in the law, all permits for the withdrawal of public waters for the purpose of irrigating agricultural lands after *the effective date of this act shall be issued in accord with the provisions of this chapter. [1979 c 3 § 3 (Initiative Measure No. 59, approved November 8, 1977).]

*Reviser's note: "The effective date of this act", see note following RCW 90.66.020.

90.66.040 Definitions. For the purposes of this chapter, the following definitions shall be applicable:

(1) "Family farm" means a geographic area including not more than two thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than two thousand acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after *the effective date of this act.

(2) "Person" means any individual, corporation, partnership, limited partnership, organization, or other entity whatsoever, whether public or private. The term "person" shall include as one person all corporate or partnership entities with a common ownership of more than one-half of the assets of each of any number of such entities.

(3) "Controlling interest" means a property interest that can be transferred to another person, the percentage interest so transferred being sufficient to effect a change in control of the landlord's rights and benefits. Ownership of property held in trust shall not be deemed a controlling interest where no part of the trust has been established through expenditure or assignment of assets of the beneficiary of the trust and where the rights of the family farm permit which is a part of the trust cannot be transferred to another by the beneficiary of the trust under terms of the trust. Each trust of a separate donor origin shall be treated as a separate entity and the administration of property under trust shall not represent a controlling interest on the part of the trust officer.

(4) "Department" means the department of ecology of the state of Washington.

(5) "Application", "permit" and "public waters" shall have the meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

(6) "Public water entity" means any public or governmental entity with authority to administer and operate a system to supply water for irrigation of agricultural lands. [1979 c 3 § 4 (Initiative Measure No. 59, approved November 8, 1977).]

*Reviser's note: "The effective date of this act", see note following RCW 90.66.020.

90.66.050 Classes of permits for withdrawal of public waters for irrigation purposes—Conditions—Requirements. After *the effective date of this act, all permits issued for the withdrawal of public waters for the purpose of irrigating agricultural lands shall be classified

as follows and issued with the conditions set forth in this chapter:

(1) "Family farm permits". Such permits shall limit the use of water withdrawn for irrigation of agricultural lands to land qualifying as a family farm.

(2) "Family farm development permits". Such permits may be issued to persons without any limit on the number of acres to be irrigated during a specified period of time permitted for the development of such land into family farms and the transfer of the controlling interest of such irrigated lands to persons qualifying for family farm permits. The initial period of time allowed for development and transfer of such lands to family farm status shall not exceed ten years. Such time limit may be extended by the department for not to exceed an additional ten years upon a showing to the department that an additional period of time is needed for orderly development and transfer of controlling interests to persons who can qualify for family farm permits.

(3) "Publicly owned land permits". Such permits shall be issued only to governmental entities permitting the irrigation of publicly owned lands.

(4) "Public water entity permits". Such permits may be issued to public water entities under provisions requiring such public water entity, with respect to delivery of water for use in the irrigation of agricultural lands, to make water deliveries under the same provisions as would apply if separate permits were issued for persons eligible for family farm permits, permits to develop family farms, or for the irrigation of publicly owned land: *Provided, however,* That such provisions shall not apply with respect to water deliveries on federally authorized reclamation projects if such federally authorized projects provide for acreage limitations in water delivery contracts. [1979 c 3 § 5 (Initiative Measure No. 59, approved November 8, 1977).]

*Reviser's note: "The effective date of this act", see note following RCW 90.66.020.

90.66.060 Withdrawal of water under family farm permit—Conditioned upon complying with definition of family farm—Suspension of permit, procedures, time.

(1) The right to withdraw water for use for the irrigation of agricultural lands under authority of a family farm permit shall have no time limit but shall be conditioned upon the land being irrigated complying with the definition of a family farm as defined at the time the permit is issued: *Provided, however,* That if the acquisition by any person of land and water rights by gift, devise, bequest, or by way of bona fide satisfaction of a debt, would otherwise cause land being irrigated pursuant to a family farm permit to lose its status as a family farm, such acquisition shall be deemed to have no effect upon the status of family farm water permits pertaining to land held or acquired by the person acquiring such land and water rights if all lands held or acquired are again in compliance with the definition of a family farm within five years from the date of such acquisition.

(2) If the department determines that water is being withdrawn under a family farm permit for use on land not in conformity with the definition of a family farm,

the department shall notify the holder of such family farm permit by personal service of such fact and the permit shall be suspended two years from the date of receipt of notice unless the person having a controlling interest in said land satisfies the department that such land is again in conformity with the definition of a family farm. The department may, upon a showing of good cause and reasonable effort to attain compliance on the part of the person having the controlling interest in such land, extend the two year period prior to suspension. If conformity is not achieved prior to five years from the date of notice the rights of withdrawal shall be canceled. [1979 c 3 § 6 (Initiative Measure No. 59, approved November 8, 1977).]

90.66.070 Transfer of property entitled to water under permit—Rights—Requirements. (1) At any time that the holder of a family farm development permit or a publicly owned land permit shall transfer the controlling interest of all or any portion of the land entitled to water under such permit to a person who can qualify to receive water for irrigation of such land under a family farm permit, the department shall, upon request, issue a family farm permit to such person under the same conditions as would have been applicable if such request had been made at the time of the granting of the original family farm development permit. If the permit under which water is available is held by a public water entity prior to the transfer of the controlling interest to a person who qualifies for a family farm permit, such entity shall continue delivery of water to such land without any restriction on the length of time of delivery not applicable generally to all its water customers.

(2) The issuance of a family farm permit secured through the acquisition of land and water rights from the holder of a family farm development permit, or from the holder of a publicly owned land permit, where water delivery prior to the transfer is from a public water entity, may be conditioned upon the holder of the family farm permit issued continuing to receive water through the facilities of the public water entity. [1979 c 3 § 7 (Initiative Measure No. 59, approved November 8, 1977).]

90.66.080 Rules and regulations—Decisions, review. The department is hereby empowered to promulgate such rules as may be necessary to carry out the provisions of this chapter. Decisions of the department, other than rule making, shall be subject to review in accordance with chapter 43.21B RCW. [1979 c 3 § 8 (Initiative Measure No. 59, approved November 8, 1977).]

Pollution control hearings board of the state: Chapter 43.21B RCW.

90.66.900 Liberal construction—Initiative Measure No. 59. This chapter is exempted from the rule of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1979 c 3 § 9 (Initiative Measure No. 59, approved November 8, 1977).]

(1987 Ed.)

90.66.910 Severability—Initiative Measure No. 59. If any provision of this act, or its application to any person, organization, or circumstance is held invalid or unconstitutional, the remainder of the act, or the application of the provision to other persons, organizations, or circumstances is not affected. [1979 c 3 § 10 (Initiative Measure No. 59, approved November 8, 1977).]

Chapter 90.70

PUGET SOUND WATER QUALITY AUTHORITY

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90.70.005	Definitions.
90.70.011	Puget Sound water quality authority—Membership—Terms—Vacancies—Compensation.
90.70.025	Authority's powers.
90.70.035	Appointment of advisory committees—Duties.
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90.70.080	Adoption of rules, ordinances, and regulations.
90.70.900	Termination of authority—Expiration of chapter.
90.70.901	Severability—1985 c 451.

90.70.001 Legislative findings—Policy. The legislature finds that Puget Sound and related inland marine waterways of Washington state represent a unique and unparalleled resource. A rich and varied range of marine organisms, composing an interdependent, sensitive communal ecosystem reside in these sheltered waters. Residents of this region enjoy a way of life centered around the waters of Puget Sound, featuring accessible recreational opportunities, world-class port facilities and water transportation systems, harvest of marine food resources, shoreline-oriented life styles, water-dependent industries, tourism, irreplaceable aesthetics and other activities, all of which to some degree depend upon a clean and healthy marine resource.

The legislature further finds that the consequences of careless husbanding of this resource have been dramatically illustrated in inland waterways associated with older and more extensively developed areas of the nation. Recent reports concerning degradation of water quality within this region's urban embayments raise alarming possibilities of similar despoliation of Puget Sound and other state waterways. These examples emphasize that the costs of restoration of aquatic resources, where such restoration is possible, greatly exceed the costs of responsible preservation.

The legislature declares that utilization of the Puget Sound resource carries a custodial obligation for preserving it. The people of the state have the unique opportunity to preserve this gift of nature, an understanding of the results of inattentive stewardship,

the technical knowledge needed for control of degradation, and the obligation to undertake such control.

The legislature further finds that the large number of governmental entities that now affect the water quality of Puget Sound have diverse interests and limited jurisdictions which cannot adequately address the cumulative, wide-ranging impacts which contribute to the degradation of Puget Sound. It is therefore the policy of the state of Washington to create a single entity with adequate resources to develop a comprehensive plan for water quality protection in Puget Sound to be implemented by existing state and local government agencies. [1985 c 451 § 1.]

90.70.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Authority" means the Puget Sound water quality authority.

(2) "Chair" means the presiding officer of the Puget Sound water quality authority.

(3) "Plan" means the Puget Sound water quality management plan.

(4) "Puget Sound" means all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of one hundred twenty-three degrees, twenty-four minutes west longitude. [1985 c 451 § 2.]

90.70.011 Puget Sound water quality authority—Membership—Terms—Vacancies—Compensation. (1) There is established the Puget Sound water quality authority composed of seven members who are appointed by the governor and confirmed by the senate. The governor shall select one of the seven members to act as chair of the authority and be presiding officer of the authority. In making these appointments, the governor shall seek to include representation of the variety of interested parties concerned about Puget Sound water quality. The commissioner of public lands and the director of ecology shall serve as ex officio, nonvoting members of the authority. The six appointed members, one from each of the six congressional districts surrounding Puget Sound, shall serve four-year terms. Of the initial members appointed to the authority, two shall serve for two years, two shall serve for three years, and two shall serve for four years. Thereafter members shall be appointed to four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated. The chair of the authority shall serve at the pleasure of the governor.

(2) The voting members, exclusive of the chair, shall be compensated as provided in RCW 43.03.250. The voting members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) The chair of the authority shall be a full time employee responsible for the administration of all functions of the authority, including hiring and terminating staff,

contracting, coordinating with the governor, the legislature, and other state and local entities, and the delegation of responsibilities as deemed appropriate. The salary of the chair shall be fixed by the governor, subject to RCW 43.03.040.

(4) The chair shall prepare a budget and a work plan which are subject to review and approval by the authority. [1985 c 451 § 3.]

90.70.025 Authority's powers. In order to carry out its responsibilities under this chapter, the authority may:

(1) Develop interim proposals and recommendations, before the plan is adopted, concerning the elements identified in RCW 90.70.060;

(2) Enter into, amend, and terminate contracts with individuals, corporations, or research institutions for the purposes of this chapter;

(3) Receive such gifts, grants, and endowments, in trust or otherwise, for the use and benefit of the purposes of the authority. The authority may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(4) Conduct studies and research relating to Puget Sound water quality;

(5) Obtain information relating to Puget Sound from other state and local agencies;

(6) Conduct appropriate public hearings and otherwise seek to broadly disseminate information concerning Puget Sound;

(7) Receive funding from other public agencies;

(8) Prepare a biennial budget request for consideration by the governor and the legislature; and

(9) Adopt rules under chapter 34.04 RCW as it deems necessary for the purposes of this chapter. [1985 c 451 § 5.]

90.70.035 Appointment of advisory committees—Duties. (1) The authority shall appoint one or more advisory committees to assist in the development of the plan. In making these appointments, the authority shall seek to include representation of all interested parties, including local governments, environmental and health agencies, tribal organizations, business, labor, citizens' groups such as environmental and public interest organizations, agricultural interests, recreational interests, and the fisheries and shellfish industries.

(2) The advisory committee or committees shall assist the authority to formulate policy goals and strategies, review the plan and make recommendations for its amendment to the authority, review the authority's reports, and review the authority's budget request proposals. [1985 c 451 § 6.]

90.70.045 Hiring of staff—Assignment of government employees to authority. (1) The chair shall hire staff for the authority. In so doing, the chair shall recognize the many continuing planning and research activities concerning Puget Sound water quality and shall seek to acquire competent and knowledgeable staff from state, federal, and local government agencies that are currently involved in these activities.

(2) As deemed appropriate, the chair may request the state departments of ecology, community development, fisheries, *game, agriculture, natural resources, and social and health services to each assign at least one employee to the authority. The chair shall enter into an interagency agreement with agencies assigning employees to the authority. Such agreement shall provide for reimbursement, by the authority to the assigning agency, of all work-related expenditures associated with the assignment of the employees. During the term of their assignment, the chair shall have full authority and responsibility for the activities of these employees.

(3) The chair shall seek assignment of appropriate federal and local government employees under available means. [1985 c 451 § 7.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

90.70.055 Water quality management plan—Progress reports—"State of the Sound" report—Budget and activities review. The authority shall:

(1) Prepare and adopt a comprehensive Puget Sound water quality management plan, as defined in RCW 90.70.060. In preparing the plan and any substantial revisions to the plan, the authority shall consult with its advisory committee or committees and appropriate federal, state, and local agencies. The authority shall also solicit extensive participation by the public by whatever means it finds appropriate, including public hearings throughout communities bordering or near Puget Sound, dissemination of information through the news media, public notices, and mailing lists, and the organization of workshops, conferences, and seminars;

(2) During the plan's initial development and any subsequent revisions, submit quarterly progress reports to the governor and the legislature.

(3) Submit the plan to the governor and the legislature no later than January 1, 1987. The authority shall review the plan at least every two years and revise the plan, as deemed appropriate;

(4) Prepare a biennial "state of the Sound" report and submit such report to the governor, the legislature, and the state agencies and local governments identified in the plan. Copies of the report shall be made available to the public. The report shall describe the current condition of water quality and related resources in Puget Sound and shall include:

(a) The status and condition of the resources of Puget Sound, including the results of ecological monitoring, including an assessment of the economic value of Puget Sound;

(b) Current and foreseeable trends in water quality of Puget Sound and the management of its resources;

(c) Review of significant public and private activities affecting Puget Sound and an assessment of whether such activities are consistent with the plan; and

(d) Recommendations to the governor, the legislature, and appropriate state and local agencies for actions needed to remedy any deficiencies in current policies, plans, programs, or activities relating to the water quality of Puget Sound, and recommendations concerning

changes necessary to protect and improve Puget Sound water quality; and

(5) Review the budgets and regulatory and enforcement activities of state agencies with responsibilities for water quality and related resources in Puget Sound. [1985 c 451 § 4.]

90.70.060 Water quality management plan—Requirements—Record of public comments. The plan adopted by the authority shall be a positive document prescribing the needed actions for the maintenance and enhancement of Puget Sound water quality. The plan shall address all the waters of Puget Sound, the Strait of Juan de Fuca, and, to the extent that they affect water quality in Puget Sound, all waters flowing into Puget Sound, and adjacent lands. The authority may define specific geographic boundaries within which the plan applies. The plan shall coordinate and incorporate existing planning and research efforts of state agencies and local government related to Puget Sound, and shall avoid duplication of existing efforts. The plan shall include:

(1) A statement of the goals and objectives for long and short-term management of the water quality of Puget Sound;

(2) A resource assessment which identifies critically sensitive areas, key characteristics, and other factors which lead to an understanding of Puget Sound as an ecosystem;

(3) Demographic information and assessment as relates to future water quality impacts on Puget Sound;

(4) An identification and legal analysis of all existing laws governing actions of government entities which may affect water quality management of Puget Sound, the interrelationships of those laws, and the effect of those laws on implementation of the provisions of the plan;

(5) Review and assessment of existing criteria and guidelines for governmental activities affecting Puget Sound's resources, including shoreline resources, aquatic resources, associated watersheds, recreational resources and commercial resources;

(6) Identification of research needs and priorities;

(7) Recommendations for guidelines, standards, and timetables for protection and clean-up activities and the establishment of priorities for major clean-up investments and nonpoint source management, and the projected costs of such priorities;

(8) A procedure assuring local government initiated planning for Puget Sound water quality protection;

(9) Ways to better coordinate federal, state, and local planning and management activities affecting Puget Sound's water quality;

(10) Public involvement strategies, including household hazardous waste education, community clean-up efforts, and public participation in developing and implementing the plan;

(11) Recommendations on protecting, preserving and, where possible, restoring wetlands and wildlife habitat and shellfish beds throughout Puget Sound;

(12) Recommendations for a comprehensive water quality and sediment monitoring program;

(13) Analysis of current industrial pretreatment programs for toxic wastes, and procedures and enforcement measures needed to enhance them;

(14) Recommendations for a program of dredge spoil disposal, including interim measures for disposal and storage of dredge spoil material from or into Puget Sound;

(15) Definition of major public actions subject to review and comment by the authority because of a significant impact on Puget Sound water quality and related resources, and development of criteria for review thereof;

(16) Recommendations for implementation mechanisms to be used by state and local government agencies;

(17) Standards and procedures for reporting progress by state and local governments in the implementation of the plan;

(19) An analysis of resource requirements and funding mechanisms for updating of the plan and plan implementation; and

(20) Legislation needed to assure plan implementation.

The authority shall circulate and receive comments on drafts of the plan mandated herein, and keep a record of all relevant comments made at public hearings and in writing. These records should be made easily available to interested persons. [1985 c 451 § 8.]

Reviser's note: Subsection (18) of this section was vetoed.

90.70.070 Water quality management plan—Incorporation by state and local governments—Review and report on implementation—Deviations from plan.

(1) In conducting planning, regulatory, and appeals actions, the state agencies and local governments identified in the plan must evaluate, and incorporate as applicable, the provisions of the plan, including any guidelines, standards, and timetables contained in the plan.

(2) The authority shall review the progress of state agencies and local governments regarding the timely implementation of the plan. Where prescribed actions have not been accomplished in accordance with the plan, the responsible state agencies and local governments shall, at the request of the authority, submit written explanations for the shortfalls, together with their proposed remedies, to the authority.

The results of the review and a description of the actions necessary to comply with the plan shall be included in the biennial state of the Sound report.

(3) The state agencies and local governments identified in the plan shall review their activities biennially and document their consistency with the plan. They shall submit written reports or updates of their findings to the authority.

(4) The authority shall review the major actions affected by the plan being considered by the state agencies and local governments and shall comment in a timely manner regarding consistency with the plan and may participate in administrative and subsequent judicial proceedings with respect to such actions. Any deviations from the plan, identified by the authority, shall be transmitted in writing by the authority to the responsible state agency or local government. [1985 c 451 § 9.]

90.70.080 Adoption of rules, ordinances, and regulations. (1) To implement this chapter, state agencies are authorized to adopt rules that are applicable to actions and activities on a less than state-wide geographic basis. State agencies are encouraged to adopt rules that protect Puget Sound water quality before the adoption of the plan by the authority.

(2) To implement this chapter, counties, cities, and towns are authorized to adopt ordinances, rules, and regulations that are applicable on less than a county-wide, city-wide, or town-wide basis. Counties, cities, and towns are encouraged to adopt ordinances, rules, and regulations that protect Puget Sound water quality before the adoption of the plan by the authority. [1985 c 451 § 10.]

Reviser's note: "This act" [1985 c 451] has been changed to "this chapter." "This act" consists of the enactment of RCW 90.70.001, 90.70.005, 90.70.011, 90.70.025, 90.70.035, 90.70.045, 90.70.055, 90.70.060, 90.70.070, 90.70.080, 90.70.901, the 1985 c 451 amendment to RCW 90.70.900, and the repeal of RCW 90.70.010, 90.70.020, 90.70.030, 90.70.040, and 90.70.050.

90.70.900 Termination of authority—Expiration of chapter. The Puget Sound water quality authority shall cease to exist and this chapter shall expire on June 30, 1991. [1985 c 451 § 11; 1983 c 243 § 6.]

90.70.901 Severability—1985 c 451. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 451 § 14.]

Chapter 90.72

SHELLFISH PROTECTION DISTRICTS

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90.72.010 Legislative encouragement. In recognition of the fact that tidelands historically used for shellfish farming are threatened by nonpoint pollution sources that have been identified as resulting from agricultural grazing practices, failing septic drainfield systems, and stormwater runoff; in recognition of the fact that some of the historical and productive shellfish areas within the state already have been contaminated by these pollution sources and as a result may not be used for shellfish farming; and in recognition of the fact that shellfish harvesting both commercially and for home consumption is a way of life in many areas of the state, particularly in the Hood Canal, southern Puget Sound, and Willapa

Bay regions, and has been so since before the days of statehood; the legislature hereby encourages all counties having tidelands used for the growing or harvesting of shellfish within their boundaries to immediately establish shellfish protection districts and programs designed to prevent any further degradation and contamination of shellfish growing areas. [1985 c 417 § 1.]

90.72.020 Shellfish tidelands. For purposes of this chapter, "shellfish tidelands" means all saltwater tidelands on which shellfish are grown or harvested for human consumption. [1985 c 417 § 2.]

90.72.030 Shellfish protection districts—Establishment—Governing body—Programs. The legislative authority of each county having shellfish tidelands within its boundaries is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the continuation of shellfish farming or harvesting. The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program to be effective within the district. This program may include any elements deemed appropriate to deal with the pollution threat, including, but not limited to, requiring the elimination or decrease of contaminants in stormwater runoff, monitoring programs to make sure that septic drainfield systems are adequately maintained and working properly and that animal grazing practices are appropriate, and educational programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution. [1985 c 417 § 3.]

90.72.040 Shellfish protection districts—Creation—Boundaries—Abolition. The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area within the county, whether incorporated or unincorporated. The legislative authority may abolish a shellfish protection district on its own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting. [1985 c 417 § 4.]

90.72.050 Coordination of plans and programs. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish tidelands, especially in respect to shellfish farming areas located within the boundaries of more than one county. [1985 c 417 § 5.]

90.72.060 Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs. Whenever a governmental entity makes a decision which addresses a matter in which there is a conflict between (1)

on the one hand, a proposed development, proposed change in land use controls, or proposed change in the provision of utility services; and (2) on the other hand, the long-term use of an area for the growing or harvesting of shellfish, which area is within the boundaries of a shellfish protection district, then the governmental entity making the decision must observe the requirements of chapter 43.21C RCW and county ordinances or resolutions integrating the state environmental policy act of 1971 into the various programs under county jurisdiction. [1985 c 417 § 6.]

90.72.070 Program financing. The county legislative authority establishing a shellfish protection district may finance the protection program through (1) its tax revenues, (2) inspection fees and similar fees or charges specified in its protection program, or (3) federal, state, or private grants. [1985 c 417 § 7.]

90.72.900 Certain authority of counties not affected by chapter. This chapter shall not be considered as diminishing or affecting the authority of a county to adopt and enforce programs or controls, within all or a portion of the county, to deal with nonpoint pollution. [1985 c 417 § 8.]

Title 91

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Chapter 91.08

PUBLIC WATERWAYS

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91.08.010 Public waterways authorized. Whenever in any county of this state the owners of lands bordering upon or accessible to any navigable water shall desire to improve their said lands, hereinafter designated as the "district," by the construction of a new public waterway, or the deepening or enlargement of an existing public waterway, for the floatage of vessels and the drainage of swamp and overflowed lands, and the proposed improvement will increase the public revenues and be of other public benefit, they may present the plan of such proposed waterway to the board of county commissioners of such county, hereinafter designated the "board," and have the same acted upon as provided in this chapter. [1911 c 23 § 1; RRS § 9777.]

91.08.020 Accessible lands defined. Lands shall be deemed accessible to such waterway when by reason of their nearness to the same their value will be materially increased by the construction or deepening or widening of such waterway. [1911 c 23 § 2; RRS § 9778.]

91.08.030 Petition—By whom signed—Contents—Notice of filing—Discharge of proceedings. The plan of such proposed waterway shall be presented to the board by a written petition of owners of lands which it is represented will be improved by the construction, deepening or widening of such waterway; and such petition shall be signed by the owners of thirty-five percent or more of the area of lands in the district, and shall be verified by one or more of the petitioners to the effect that the signatures attached are the genuine signature of the persons or corporations signing the same. Each petitioner shall add a description of the lands he owns. If petitioners are unmarried persons they shall so state. If lands are owned by married persons, husband and wife shall join in the petition. If a petitioner is a corporation, the signature shall be accompanied by a certified copy of a resolution of the board of directors or trustees of the corporation authorizing the person signing the petition for the corporation to execute it. If lands included in the petition are owned by minors, insane persons, or other persons under guardianship in this state, the petition may be signed by the guardians of such persons: *Provided*, That the signature be accompanied by a certified copy of an order of the superior court having the guardianship of such person in charge, authorizing the guardian to sign the petition. A petition may consist of one or more separate papers or sheets which are identified with the subject matter.

The petitioners shall file with the board, with their petition, a map of the lands in the district and a statement showing each separate ownership of lands as shown by the public records of the county, and their location in the county, with the names of the owners as shown by such records, and the location of the proposed waterway if a new waterway is to be constructed. If an existing waterway is to be deepened the map shall show its location, and if it is to be widened the map shall show its location and the extent to which it is to be widened. With the petition there shall also be presented satisfactory evidence from the real property records of the county that the petitioners are severally the owners in fee simple of their respective tracts of land, and that all taxes and assessments due thereon are paid. If it is proposed that any lands in the district shall be filled with the material dug or dredged from such waterway, the petition shall so state, and the map of the district and plan of the improvement shall show the location, depth and yardage of such fill. The petition may also fix the price per cubic yard at which such fill shall be charged to the land filled, which charge shall be added to the assessment for the improvement to be made upon such lands and be paid as a part thereof. If the price of filling is not fixed by the petition it may be fixed by the board.

At any time after the filing of such petition one or more of the petitioners may file and record in the office of the auditor of the county, notice of the pendency of the proceeding, describing the boundaries of the proposed district, and from the time of such filing all persons shall be deemed to have notice of the pendency of the proceeding and be bound thereby. Upon the hearing upon such petition, hereinafter provided, if the same be denied any person interested may file in the office of said county auditor a certified copy of the order denying the same, whereupon the auditor shall enter the discharge of the notice of the pendency of the proceeding on the margin of the record thereof. And the like discharge may be filed whenever the proceeding is terminated for any other reason. [1911 c 23 § 3; RRS § 9779. Formerly RCW 91.08.030, 91.08.040 and 91.08.050.]

91.08.060 Cost bond filed with petition. Said petitioners shall at the time of filing their petition with the board, file a bond executed by one or more of their number as principals, and in behalf of all, and by a surety corporation authorized to become surety upon public bonds in this state, which bond shall run to the state of Washington as obligee and be in the sum of five hundred dollars, conditioned that they will pay all costs of the proceeding in case for any reason the petition shall not be granted, or in case no fund shall thereafter be created for the payment of the expense attending said proposed waterway improvement. And said petitioners shall, from time to time as the board shall estimate and order, pay the costs and expenses of such proceeding. [1911 c 23 § 4; RRS § 9780.]

91.08.070 Petition may be amended—Order for hearing—Notice—Record. The petition, after the filing thereof, shall be taken up and considered by the

county legislative authority at the next regular or special meeting thereof, or as soon thereafter as may be convenient, and if the petition be defective in any particular it may be amended and an adjournment of the matter may be had to permit of the amendment, for a time not exceeding thirty days. If the petition be defective and be not sufficiently amended within the adjournment taken, it shall be dismissed. But if the petition is sufficient, or if by amendment it be made sufficient, it shall be the duty of the county legislative authority to enter an order setting a time for a public hearing thereon within thirty days from the date of the order, and directing the clerk of the county legislative authority to give notice of the time and place of the hearing in the official newspaper of the county by publication therein at least once each week for three successive weeks before the time of hearing. The notice shall be addressed to the owners of lands not petitioning, as shown by the petition or as may be ascertained to be the fact, and to all other persons known and unknown having or claiming an interest in the lands in the district, and shall state the pendency of the proceeding, its object, the names of the signers of the petition, the number of acres of land they claim to own, the whole number of acres proposed to be improved, the boundaries of the lands to be included in the improvement district, and the time and place of hearing. And notice shall also be given that at the time and place named, or at such time as the same may be adjourned to, the board will consider the petition under the provisions of this chapter, and will hear all objections offered by interested parties and grant or refuse the petition as it may be advised. The clerk of the board shall keep a record of all orders, hearings and proceedings of the board in reference to the waterway district in a separate bound book, designated as the record of proceedings as to such district. [1985 c 469 § 96; 1911 c 23 § 5; RRS § 9781.]

91.08.080 Hearing—Findings—Order. At the time and place prescribed in the said notice any owner of land within said proposed improvement district may file with the board his written consent to the proposed improvement, and he shall then be considered as a petitioner; and if the owners of more than one half of the lands within the district, including the lands represented by the petition, shall assent to the prayer of said petition, the board shall then proceed to hear and consider any objections which may have been filed at that or any previous time, and may adjourn such hearing from day to day. If the board after full hearing on the merits of the proposed waterway shall be satisfied that the same will be of benefit to the public interests, and that private benefit will result to the lands within the district sufficient to equal the cost of the proposed improvement, they may make findings accordingly and declare their intention to establish the waterway district under the name of the "----- Waterway District" and make the improvement as prayed for; but if the owners of less than one half of the lands in the district shall assent to the creation thereof and the making of the proposed improvement, the board shall deny the petition and the

proceeding shall be dismissed. [1911 c 23 § 6; RRS § 9782.]

91.08.090 Board's powers and duties—In general—County immune from expense. Upon the entry of an order creating such waterway district by the board, it shall have power to perform all the duties and exercise all of the authority conferred upon it by this chapter, and shall have the right to sue and be sued in all matters pertaining to such district as the representative thereof, in the same manner and to the same extent as in all other county affairs. But such district shall bear all the expenses of such action on the part of the board, and the county shall be at no expense or charge therefor. [1911 c 23 § 7; RRS § 9783.]

91.08.100 Board's powers and duties—Right of eminent domain. Said board shall have the right of eminent domain for the acquisition of lands necessary to the construction or widening of the proposed waterway, and may cause all necessary lands to be condemned and appropriated or damaged for the use of said waterway, and make just compensation therefor. The private property of the state, the county, and other public or quasi-public corporations (except incorporated cities and towns), and of private corporations, shall be subject to the same rights of eminent domain at the suit of said board as the property of private individuals. [1911 c 23 § 8; RRS § 9784.]

91.08.110 Bridging part of cost. Whenever in aid of the construction or widening of any such waterway it shall be necessary to cross or disturb any existing public highway or railroad, the cost of bridging the waterway or otherwise substantially continuing the highway or railroad may be ascertained and paid as a part of the cost of the improvement if such cost is not otherwise provided for. [1911 c 23 § 9; RRS § 9785.]

91.08.120 Eminent domain—Order to acquire or condemn property. Whenever the said board shall desire to condemn and acquire land, or damage lands or property for any purpose authorized by this chapter, said board shall make an order therefor wherein it shall be provided that such land or damages shall be paid for wholly by special assessment upon the property within said waterway district, and the proceeding thereafter shall be as herein specified. [1911 c 23 § 10; RRS § 9786.]

91.08.130 Eminent domain—Petition to condemn. The board shall file a petition, verified by its chairman and signed by the prosecuting attorney, in the superior court of the county, praying that the property described may be taken or damaged for the purpose specified and that compensation therefor be ascertained by a jury or by the court in case a jury be waived. Such petition shall allege the creation of the waterway district and contain a copy of the order directing the proceeding, a reasonably accurate description of the lots or parcels of land or other property which will be taken or damaged, and the

names of the owners and occupants of said lands and of said persons having any interest therein so far as known to the said board, or as appears from the records in the office of the county auditor. [1911 c 23 § 11; RRS § 9787.]

91.08.140 Eminent domain—Summons. Upon the filing of the petition aforesaid a summons returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions; and in case any of the defendants are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon non-resident or unknown defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [1911 c 23 § 12; RRS § 9788.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

91.08.150 Eminent domain—Service in case of public lands—Legal counsel. In case the land or other property sought to be taken or damaged is state land, the summons and copy of petition shall be served upon the commissioner of public lands; if it is county land it shall be served upon the county auditor, and if school land, upon the county auditor and the chairman of the board of directors of the school district. Service upon other parties defendant, public or private, shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. If the state is made a defendant the attorney general shall represent it. If the county is a defendant the court shall appoint an attorney to represent it at all stages of the proceedings, and may allow him compensation for his services as costs of the proceeding. [1911 c 23 § 13; RRS § 9789.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

Department of natural resources to exercise certain powers and duties—Commissioner of public lands: RCW 43.30.130.

Eminent domain where state land is involved: RCW 8.28.010.

Public lands treated as private lands: RCW 91.08.570.

91.08.160 Eminent domain—Finding of public use—Jury—Dismissal. Upon the return of said summons, or as soon thereafter as the business of the court will permit, the said court shall proceed to the hearing of such petition and shall adjudicate whether the proposed condemnation is for a public use, and if its judgment is that the proposed use is public, it shall empanel a jury to ascertain the just compensation to be paid for the lands or property taken or damaged, unless a jury be waived; but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be empanelled as to the separate compensation or damages to be paid to any one or more of such defendants or parties in interest. Should the court determine that the proposed use is not public, it

shall dismiss the proceeding. [1911 c 23 § 14; RRS § 9790.]

91.08.170 Eminent domain—New parties may be admitted. The jury or court shall also ascertain the just compensation to be paid to any person found to have an interest in any lot or parcel of land or property which may be taken or damaged for such improvement, whether or not such person's name or such lot or parcel of land or other property is mentioned or described in said petition: *Provided*, That such person shall first be admitted as a party defendant to such suit by such court and shall file a statement of his interest in, and a description of, the lot or parcel of land or other property in respect to which he claims compensation. [1911 c 23 § 15; RRS § 9791.]

Procedure after findings: RCW 91.08.210.

Substitute defendant: RCW 91.08.220.

91.08.180 Eminent domain—Jury may view property. The court may upon motion of the petitioners, or of any defendant, direct that the jury under the charge of an officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged, shall view the lands or property taken or damaged for the proposed improvement. [1911 c 23 § 16; RRS § 9792.]

91.08.190 Eminent domain—Measure of damage to buildings. If there be any building standing in whole or in part upon any land to be taken, the jury or court shall add to the finding of the value of the land taken, the value or damage to such building as the case may require. If the entire building is taken, or if it is damaged so that it cannot be readjusted to premises of the owner, then the measure of damages shall include the fair market value of the building. If part of the building is taken, or it is damaged but can be readjusted or replaced on premises of the owner, then the measure of damages shall be the cost of readjusting or moving the building or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1911 c 23 § 17; RRS § 9793.]

91.08.200 Eminent domain—Findings as interests appear—Interpleader. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damage done to each of such parties or interests may be separately found by the jury or court on the written request of any party. And in making such findings the jury or court shall first find and set forth the total amount of the damage to said lands and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same in proportion to their several interests and claims. But no delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise

as to the ownership of the property or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case the jury or court shall ascertain the entire compensation or damage that should be paid for the property and the court may thereafter require adverse claimants to interplead so as to fully determine their rights and interests in the compensation so ascertained, and may make such order as may be necessary in regard to the deposit or payment of such compensation and the division thereof. [1911 c 23 § 18; RRS § 9794.]

91.08.210 Eminent domain—Procedure after findings. Upon the filing of the findings of the jury or court, the proceedings of the court regarding new trial and the entry of judgment thereon, shall be the same as in other civil actions, and the judgment shall be such as the nature of the case may require. The final judgment of the court shall be that the lands and property taken and damaged shall, upon payment of the sums awarded, vest in the county as and for a public waterway. The court shall continue or adjourn the case from time to time as to all defendants named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication be made at any time, and upon such defendants being brought in the court may empanel a jury to ascertain the compensation so to be made to such defendants for property taken or damaged, or may proceed without a jury if none be demanded, and like proceedings shall be had for such purpose as are herein provided. [1911 c 23 § 19; RRS § 9795.]

Civil procedure

judgments: Chapters 4.56 through 4.64, 4.72 RCW.

new trials: Chapter 4.76 RCW.

new parties may be admitted: RCW 91.08.170.

91.08.220 Eminent domain—Substitution of new owner as defendant. The court shall have power at any time, upon proof that any defendant who has not been served with process has ceased to be an owner since the filing of such petition, to substitute the new owner as a defendant, and after due service of the summons and petition upon him proceed as though he had been a party in the first instance; and the court may upon any finding of the jury, or at any time during the course of the proceedings, enter every such order, rule, judgment or decree as the nature of the case may require. [1911 c 23 § 20; RRS § 9796.]

New parties may be admitted: RCW 91.08.170.

Procedure after findings: RCW 91.08.210.

91.08.230 Eminent domain—Guardian ad litem. When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant, insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or insane or distracted person to appear and defend for him, her or them; and the court shall make such order or decree as it shall deem proper to protect and secure the

interest of such infant or insane or distracted person in such property, or the compensation which shall be awarded therefor. [1911 c 23 § 21; RRS § 9797.]

91.08.240 Eminent domain—Damage irrespective of benefits. The compensation to be ascertained by the jury or court shall be irrespective of any benefit from the improvement proposed, and the finding shall state separately the value of land taken from any tract and the damage, if any, to remaining land by reason of the severance. [1911 c 23 § 22; RRS § 9798.]

91.08.250 Eminent domain—Finality of judgment—Appeal—Waiver of appeal. Any final judgment rendered by said court upon the findings of the court or a jury, shall be the lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases: *Provided*, That in case any defendant recovers no award, no costs shall be taxed. Such judgment shall be final and conclusive as to the damages caused by such improvement, unless appealed from, and no appeal from the same shall delay proceedings under the order of said board if it shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs; but such board after making such payment into court shall be liable to such owner or owners, or parties interested, for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court or the court of appeals of the state by any party to the proceedings, the money so paid into the superior court by the board, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property, accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court or the court of appeals and final judgment may be rendered in the superior court as in other cases. [1971 c 81 § 180; 1911 c 23 § 23; RRS § 9799.]

Rules of court: Cf. RAP 2.5(b).

Appeal: RCW 91.08.580.

Civil procedure—Costs: Chapter 4.84 RCW.

91.08.260 Eminent domain—Decree of appropriation. The court upon proof that the judgment, together with costs, has been paid to the person entitled thereto, or has been paid into court, shall enter an order that the board shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so made or paid into court as aforesaid, and thereupon the title to any property so taken shall be vested in fee simple in the public as a water highway. [1911 c 23 § 24; RRS § 9800.]

91.08.270 Assessment procedure—Petition—Assessment commissioners. Said board shall, upon the entry of the condemnation judgment, file in the same proceeding a supplementary petition, praying the court that an assessment be made upon the lands in the district for the purpose of raising an amount necessary to pay the compensation and damages awarded for the property taken or damaged, with costs of the proceedings, and for the estimated cost of the proposed improvement; and the court shall thereupon appoint three competent disinterested persons as commissioners to make such assessment. Said commissioners shall include in such assessment the compensation and damages awarded for the property taken or damaged, with legal interest from the date of entry of the judgment, and with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceedings was referred to them, together with the probable further costs and expenses of the proceeding, including therein the estimated cost of making and collecting such assessment. The petitioners for the improvement shall be entitled to have included in the costs of the proceeding, and repaid to them, such reasonable sums as they may have expended in preparing the maps and plans of the improvement and procuring the names of landowners for filing with the petition. Such expenditures to be approved and allowed by the court. [1911 c 23 § 25; RRS § 9801.]

Invalidity of assessments—Reassessment: RCW 91.08.520.

Public lands treated as private lands—Assessment of: RCW 91.08.575.

91.08.280 Assessment procedure—Oath and compensation of commissioners. Said commissioners, before entering upon their duties, shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment herein provided for, upon his filing in the proceeding a verified statement showing the number of days he has actually spent therein; and upon the approval of said statement by the judge of the court in which the proceeding is pending, the board shall issue a warrant in the amount so approved, upon the special fund created to pay the awards and costs of said proceeding; and the fees of such commissioners so paid, and all expenses returned by them and allowed by the court shall be included in the cost and expense of such proceeding. [1911 c 23 § 26; RRS § 9802.]

91.08.290 Assessment procedure—Apportionment of assessment. It shall be the duty of such commissioners to examine the lands in the district and to apportion and assess the amount of the judgment, interest and costs as hereinbefore defined, of the condemnation proceeding, and of the estimated cost of the proposed improvement, and of the price of any fill made with material dug or

dredged from such waterway, upon the several lots, blocks, tracts and parcels of land in said district, in the proportion in which they will be severally benefited; which assessment shall be a proportionate charge upon each square foot of land contained in each separate lot, block, tract or parcel of land. [1911 c 23 § 27; RRS § 9803.]

91.08.300 Assessment procedure—Assessment roll. The commissioners shall make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land or other property, and the amounts assessed thereon as special benefits thereto, specifying separately the benefits from the opening of the waterway, for construction, and for fill if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court. In determining the benefit to be assessed upon any lot or parcel of land for the opening of the waterway, the commissioners shall ascertain from the finding of the court or jury whether or not it is remaining land after the severance of land taken from an original lot or parcel for right-of-way of such proposed waterway, and the damage awarded to such remaining land, if any, allowed by reason of the severance; and for such opening shall assess as benefits to such remaining land only the excess of the benefit accruing thereto over the damage awarded by the finding. [1911 c 23 § 28; RRS § 9804.]

91.08.310 Assessment procedure—Order for hearing on roll—Notice. Upon its completion the commissioners shall return their assessment roll into court, and thereupon the court shall make an order setting a time for the hearing thereon before the court, which day shall be at least thirty days after the entry of the order. The commissioners shall give notice of the assessment and of the day fixed by the court for the hearing thereon in the following manner:

(1) They shall at least twenty days prior to the date fixed for the hearing on the roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

"(Title of cause.) To -----: Pursuant to an order of the superior court of the State of Washington, in and for the county of ----- there will be a hearing in the above entitled cause on ----- at ----- upon the assessment roll prepared by the commissioners heretofore appointed by the court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objection to the assessment roll, to file your objections to the same before the date herein fixed for the hearing upon the roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows:

(Description of property and amount assessed against it.)

Commissioners."

(2) They shall cause at least twenty days' notice to be given of the hearing by publishing the same at least once a week for two successive weeks in the official county newspaper. The notice so required to be published may be substantially as follows:

"(Title of cause.) Special Assessment Notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that the roll has been set down for hearing on the ----- day of ----- at ----- The boundaries of the assessment district are substantially as follows: (here insert an approximate description of the assessment district.) All persons desiring to object to the assessment roll are required to file their objections before said date fixed for the hearing upon the roll, and appear on the day fixed for hearing before the court.

Commissioners."

[1985 c 469 § 97; 1911 c 23 § 29; RRS § 9805.]

91.08.320 Assessment procedure—Proof of service of notice. On or before the day fixed for the hearing, the affidavit of one or more of the commissioners shall be filed in said court showing the mailing of the notices above prescribed, and an affidavit of the publisher of the newspaper showing the publication of notice, with a copy of the published notice attached, which affidavit shall be received as prima facie proof of the giving of notice as herein required. [1911 c 23 § 30; RRS § 9806.]

91.08.330 Assessment procedure—Cause may be continued. If twenty days shall not have elapsed between the first publication of such notice and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter until final judgment on the assessments, and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [1911 c 23 § 31; RRS § 9807.]

91.08.340 Assessment procedure—Hearing—Findings—Judgment. Any person interested in any property assessed and desiring to object to the assessment thereon, shall file his objections to such report at any time before the day set for hearing said roll, and serve a copy thereof upon the prosecuting attorney. As to all property to the assessment upon which no objections are filed and served, as herein provided, default may be entered and the assessment confirmed by the court. On the hearing of objections the report of the

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commissioners shall be competent evidence to support the assessment, but either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law tried by the court without a jury; and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the cost of the condemnation and improvement, the court shall so find, and it shall also find the amount in which said property ought to be assessed and correct the assessment accordingly. Judgment shall be entered confirming the assessment roll as originally filed or as corrected, as the case may require. [1911 c 23 § 32; RRS § 9808.]

Civil procedure: Title 4 RCW.

91.08.350 Assessment procedure—Roll may be recast—New commissioners. The court before which any such proceeding may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment roll returned as aforesaid, or cause any such assessment roll to be recast by the same commissioners whenever it shall be necessary for the obtainment of justice; or it may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such condemnation and improvement according to the principals of this chapter, and may from time to time, as may be necessary, continue the proceeding for that purpose as to the whole or any part of the premises. [1911 c 23 § 33; RRS § 9809.]

Invalidity of assessments—Reassessment: RCW 91.08.520.

91.08.360 Assessment procedure—Judgment separate as to each tract—Effect of appeal. The judgment of the court confirming the assessment roll shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a proportionate lien upon each square foot of the property assessed from the date of entry until payment shall be made. [1911 c 23 § 34; RRS § 9810.]

Appeal: RCW 91.08.580.

91.08.370 Assessment procedure—Roll certified to treasurer—Interest on assessment upon appeal. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll as confirmed, and of the judgment confirming the same, to the treasurer of the county, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is

entered: *Provided*, That if upon such appeal the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall be sufficient warrant to the county treasurer to collect the assessments therein specified in the manner hereinafter provided. [1911 c 23 § 35; RRS § 9811.]

91.08.380 Assessment procedure—Notice of filing roll. The treasurer receiving such certified copy of the assessment roll and judgment shall immediately give notice thereof by publishing such notice at least once in the official newspaper or newspapers of such county, if such newspaper or newspapers there be; and if there be no such official newspaper, then by publishing such notice in some newspaper of general circulation in the county. Such notice may be in substantially the following form:

"SPECIAL ASSESSMENT NOTICE.

Public notice is hereby given that the superior court of ----- county, State of Washington, has rendered judgment for a special assessment upon property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the assessment roll on file in my office, and that the undersigned is authorized to collect such assessments. All persons interested are hereby notified that they can pay the amounts assessed, or any part thereof, without interest, at my office (here insert location of office) within sixty days from the date hereof.

Dated this ----- day of ----- A.D. 19...

Treasurer of -----
county, Washington."

[1911 c 23 § 36; RRS § 9812.]

91.08.390 Payment of assessment—Alternate methods. The owner of any land charged with an assessment under this chapter, may discharge the same from all liability for the cost of such condemnation and improvement by paying the entire assessment charged against his land, without interest, within the time fixed by the notice of the county treasurer for the payment thereof; or within said time he may pay a part of such assessment and allow the remainder to continue as an assessment upon his land to be collected and paid as hereinafter provided; or within said time he may pay the entire assessment per square foot upon any part of his land, providing that he shall when paying such partial assessment give to the treasurer a description of the tract paid for. [1911 c 23 § 37; RRS § 9813.]

Payment of assessments by satisfying judgment: RCW 91.08.590.

91.08.400 Payment of assessment—Record of payment without interest. When any assessment shall be paid either in full or in part only, within the time for

payment without interest fixed by his notice, the treasurer shall note the fact of such payment opposite the assessment. [1911 c 23 § 38; RRS § 9814.]

91.08.410 Payment of assessment—Installments—Collection. Immediately after the expiration of the time fixed by his notice for payment of assessments without interest, the treasurer shall divide the several assessments which remain unpaid in whole or in part into ten equal amounts or installments, as near as may be, without fractional cents, and enter said installments upon the roll opposite the several assessments, numbering the same from one to ten successively. And thereafter said treasurer shall annually for ten years, before the time fixed by law for the collection of state and county taxes, add one of the said assessment installments with interest for one year from the expiration of the time for payment without interest, or of the anniversary thereof, at a rate determined by the board on the entire unpaid assessment, to the tax levied upon the property assessed, where said tax appears upon the county tax roll, and collect said installment and interest, without reduction of percentage for prepayment, at the same time and in the same manner as state and county taxes are collected. And after delinquency said installments and interest shall be subject to the same charges for increased interest and penalties as are other delinquent taxes. But no tax sale of lands assessed under this chapter shall discharge the same from the lien of any unpaid installments of the assessment against it until all installments and interest are fully paid. [1981 c 156 § 34; 1911 c 23 § 39; RRS § 9815.]

Collection of taxes: Chapter 84.56 RCW.

91.08.420 Payment of assessment—Record of installment payments. As each assessment installment is paid the treasurer shall note the payment thereof in the proper place upon the assessment roll. [1911 c 23 § 40; RRS § 9816.]

91.08.430 Payment of assessment—Payment in full or in part—Interest—Segregation. The owner of any lands assessed under this chapter may at any time after the time fixed by the treasurer's notice for payment without interest, discharge his lands from the unpaid assessment by paying the principal of all installments unpaid with interest thereon at a rate determined by the board to the next anniversary of the time fixed as aforesaid; or he may pay one or more installments, with like interest, beginning with installment number ten and continuing in the inverse numerical order of installments. The successor in title to any part of his lands may have the proportionate assessment segregated on the roll and charged to such part upon his producing to the treasurer his recorded deed to such part. [1981 c 156 § 35; 1911 c 23 § 41; RRS § 9817.]

91.08.440 Payment of assessment—Interest on last installment. The last installment of any assessment paid shall include interest thereon at a rate determined

by the board to the actual date of payment. [1981 c 156 § 36; 1911 c 23 § 42; RRS § 9818.]

91.08.450 Payment of assessment—Land taken for public use. Should any of the lands assessed under this chapter be taken for or dedicated to public use, for highway or any other public purpose, before the taking or dedication shall be complete or take effect there shall be paid to the county treasurer a sum equal to the principal of the unpaid assessment upon said land at its proportionate rate per square foot, with interest thereon for one year at a rate determined by the board; and the treasurer shall credit the principal sum paid to the unpaid installments upon the tract as originally assessed. [1981 c 156 § 38; 1911 c 23 § 43; RRS § 9819.]

91.08.460 Payment of assessment—Treasurer's report. Immediately after expiration of the time fixed by the treasurer for the payment of assessments levied under this chapter, he shall report to the board in writing the sum collected by him and in his hands to the credit of the assessment roll; and thereafter and on or before the first days of January and July in each year he shall make written reports to said board of the sums collected by him upon said roll, stating in detail the amount of principal, interest and penalty so collected, the amount of principal remaining uncollected, and also, in detail, the principal and interest paid out by him under authority of the board, and the balance in his hands to the credit of the roll. [1911 c 23 § 44; RRS § 9820.]

91.08.465 Bonds—Authorized—Purposes for issuance. Should the owners of any lands assessed to pay for an improvement contemplated by this chapter, fail to pay the assessments thereon in full on or before the day fixed by the treasurer's notice as the time for payment without interest, the board shall provide and issue bonds of the district to the total amount of the unpaid assessments, which bonds may either be issued to persons contracting to perform the work of making the improvement, or exchange with them for warrants; or be issued in exchange for work or materials; or they may be sold outright as hereinafter provided. Such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 265; 1911 c 23 § 45; RRS § 9821. Formerly RCW 91.08.470, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

91.08.480 Bonds—Terms, form, interest, execution. (1) Such bonds shall be issued pursuant to an order made by the board and by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date shall also be fixed by such order. They shall bear interest at the rate or rates as authorized by the board, which interest shall be payable semiannually at periods named; shall be of such denomination as shall be provided in the order directing the issue, but not less than one hundred dollars nor more than one thousand dollars; shall be numbered from one upward consecutively and each bond

shall be signed by the president of the board and attested by its clerk: *Provided, however,* That any coupons may, in lieu of being so signed, have printed thereon facsimile signatures of said officers. Each bond shall in the body thereof refer to the improvement to pay for which the same is issued; shall provide that the principal sum therein named and the interest thereon shall be payable out of the fund created for the payment of the cost and expense of said improvement, and not otherwise; and shall not be issued in an amount which, together with the assessments already paid, will exceed the cost and expense of the said condemnation and improvement. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 266; 1970 ex.s. c 56 § 105; 1969 ex.s. c 232 § 48; 1911 c 23 § 46; RRS § 9822.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

91.08.485 Bonds—Sale or exchange for par value. (1) Said bonds, whether sold or exchanged, shall be disposed of for not less than their par value and accrued interest.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 267; 1911 c 23 § 47; RRS § 9823. Formerly RCW 91.08.470, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

91.08.490 Bonds—Sale of. (1) Before making any sale of such bonds the board shall advertise the sale and invite sealed bids therefor, by publication in the county official newspaper at least once, and in such other manner as it sees fit, for a period of thirty days. At the time and place fixed for receiving bids the board shall open all bids presented and may either award the bonds to the highest bidder or reject all bids. Delivery of the bonds and payment therefor may be as required by the board. The purchaser of any such bonds shall pay the money due therefor to the county treasurer, who shall place it in the district fund.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 268; 1911 c 23 § 48; RRS § 9824.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

91.08.500 Bonds—Payment. The treasurer shall pay the interest on the bonds authorized to be issued by this chapter, on presentation of matured coupons therefor, out of the funds of the district in his hands. Whenever there shall be sufficient money in any such fund

(not less than one thousand dollars) over and above sufficient for the payment of matured interest on all outstanding bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay the bonds in their numerical order: *Provided*, That the call for bonds shall be made by publication in the official newspaper of the county within five days after the semiannual interest period, and shall state that bonds numbered ----- (giving the serial numbers of the bonds called) will be paid on presentation; and that after a date named, not more than fifteen days thereafter, interest on the bonds called shall cease. [1985 c 469 § 98; 1911 c 23 § 49; RRS § 9825.]

91.08.510 Bonds—Recourse of owner limited to special assessment—Bond to so state. The owner of any bond issued under authority of this chapter shall not have any claim therefor against any person, body or corporation, except from the special assessment made for the improvement for which such bond was issued; but his remedy in case of nonpayment shall be confined to the enforcement of such assessment. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [1983 c 167 § 269; 1911 c 23 § 50; RRS § 9826.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

91.08.520 Invalidity of assessments—Reassessment. In all cases of assessments for improvements under this chapter, wherein such assessment shall have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity, or nonconformance with the provisions of this chapter, the board is hereby authorized to cause such assessments to be reassessed and to enforce their collection in accordance herewith. [1911 c 23 § 51; RRS § 9827.]

Assessment procedure: RCW 91.08.270 through 91.08.380.

91.08.530 Construction—Contractor's bond—Bidder's deposit—Claims. After the confirmation of the assessment roll of any improvement district provided for herein, the board shall proceed at once with the construction of the improvement, and in carrying on said construction it shall have full charge and management thereof and the power to employ such assistants as it may deem necessary, and purchase all material required in such construction; and it shall have power to let the whole or any part of the work of said improvement to the lowest and best bidder therefor, after public advertisement and call for bids; and in case of such letting of a contract it shall have the power also to enter into all necessary agreements with the contractor in the premises: *Provided*, That in the case of the letting of a contract the board shall require the contractor to give a bond in the amount of the contract price, with sureties to be approved by the board and running to the board as obligee therein, conditioned for the faithful and accurate performance of his contract by said contractor, and that he will pay, or cause to be paid, all just claims of all persons performing labor upon or rendering services in

doing said work, or furnishing materials, merchandise or provisions used by said contractor in the construction of said improvement. Said bond shall be filed and recorded in the office of the auditor of the county and every subcontractor on any such work shall file and record a like bond in the full amount of his subcontract. Unless otherwise paid their claims for labor or services, materials, merchandise or provisions, the claimants may have recourse by suit upon such bond in their own names: *Provided*, That no such claim or suit shall be maintained unless the persons making said claim shall within thirty days after the completion of said improvement, file their claims, duly verified, to the effect that the amounts thereof are just and due and are unpaid, with the clerk of the board. Each bidder for a contract to be let under this section shall deliver with his bid a check for five percent of the amount of the bid, drawn upon a bank in this state and certified by the bank, as surety to the board that the bidder will enter into the contract with the board. The checks of unsuccessful bidders will be returned to them when an award of the contract has been made by the board. [1911 c 23 § 52; RRS § 9828.]

Contractor's bond: Chapter 39.08 RCW.

91.08.540 Construction—Installment payments—Reserve. During the construction of the improvement said board shall have the right to allow payment therefor to contractors in installments as the work progresses, in proportion to the amount of work completed: *Provided*, That no such allowance or payment shall be made for exceeding seventy-five percent of the proportionate amount of the work completed; and twenty-five percent of the contract price shall be reserved at all times by said board until such work is fully completed, and shall not be paid until thirty days have expired after such completion. Upon completion of the work and the production of satisfactory evidence to the board that all just claims for labor, materials, goods, wares, merchandise and provisions furnished to the contractor have been paid, the board shall accept the improvement and pay the contract price therefor. [1911 c 23 § 53; RRS § 9829.]

91.08.550 Warrants. The indebtedness of any such district on contracts, or upon employment or for supplies, shall be paid by warrants on the district fund only, to be issued by the board upon allowed written claims. Such warrants shall be in form the same as county warrants, or as nearly the same as may be practicable; shall draw the legal rate of interest from the date of their presentation to the county treasurer for payment, and shall be signed by the chairman and attested by the clerk: *Provided*, That no warrants shall be issued in payment of any indebtedness of such district for less than the face or par value. [1911 c 23 § 54; RRS § 9830.]

Public contracts and indebtedness—Interest rate on warrants: Chapter 39.56 RCW.

91.08.560 Warrants—Payment. All warrants issued under RCW 91.08.550 may be presented by the holders thereof to the county treasurer, who shall pay

them or endorse thereon the date of presentation for payment and if the same are not paid, and the reason for their nonpayment; and no warrant shall draw interest until it is so presented and endorsed by the county treasurer. It shall be the duty of the treasurer from time to time, when he has sufficient funds in his hands for the purpose, to give notice to warrant holders to present their warrants for payment; such notice to be given by advertisement in the county newspaper. And thirty days after the first publication of said notice the warrants called shall cease to bear interest. Said notice shall be published once each week for two weeks consecutively, and such warrants shall be called and paid in the order of their endorsement. [1911 c 23 § 55; RRS § 9831.]

91.08.570 Public lands not devoted to public use to be treated as private lands. State, school, county, school district, and other lands belonging to other public corporations which will be benefited by the construction, deepening or widening of any such waterway, and which are not devoted to public use, shall be subject to the provisions of this chapter, and the owners thereof by and through the proper authorities, shall be made parties in all proceedings affecting said lands, and shall have the same rights and be liable to the same right of eminent domain as the lands of private persons or corporations. [1911 c 23 § 56; RRS § 9832. FORMER PART OF SECTION: 1911 c 23 § 57; RRS § 9833, now codified as RCW 91.08.575.]

Eminent domain procedure—Service in case of public lands: RCW 91.08.150.

91.08.575 Public lands not devoted to public use to be treated as private lands—Assessment. Lands belonging to the state, and school, county, school district and other lands belonging to public corporations and which are not devoted to public use, which are benefited by any improvement instituted under the provisions of this chapter, shall be assessed in the same manner as lands of private persons and corporations, and the assessment shall be paid by the proper authorities. [1911 c 23 § 57; RRS § 9833. Formerly RCW 91.08.570, part.]

Assessment procedure: RCW 91.08.270 through 91.08.380, 91.08.520.

91.08.580 Appeal. Every defendant feeling aggrieved by any condemnation judgment for compensation or damages, or by any judgment confirming an assessment upon land for benefits under this chapter, may appeal to the supreme court or the court of appeals of the state from such judgments within thirty days after the entry thereof. An appeal from a condemnation judgment may bring before the supreme court or the court of appeals either the legality of the proceeding as a taking for a public use, or the justness of the amount of compensation or damages awarded to the appellant; but an appeal from a judgment confirming an assessment of benefits shall bring before the supreme court or the court of appeals only the justness of the assessment against the property of the appellant. Two or more defendants may join in an appeal. The bill of exceptions or statement of facts upon such appeals shall contain only such portions

of the evidence in the case as relates to the property of the appellants. Otherwise than as provided in this section such appeals shall be taken as provided by law in appeals from final judgments in actions at law. [1971 c 81 § 181; 1911 c 23 § 58; RRS § 9834.]

Rules of court: Method of appellate review, Cf. Title 2 RAP, RAP 18.22.

91.08.590 Payment of assessments by satisfying judgment. Any defendant in a condemnation proceeding under this chapter, whose remaining land, or whose other lands in the district, shall be assessed for benefits arising from the improvement, may pay his assessments in full, if they be less than his condemnation judgment, at or before the time fixed by the treasurer for the payment of assessments without interest, by satisfying his judgment upon the judgment docket and producing to the treasurer the certificate of the county clerk that the judgment has been satisfied. And if his assessments be greater than his condemnation judgments he may, within the same time, pay his assessment to the extent of his judgment by the like satisfaction and the like production of the clerk's certificate to the treasurer. In each case the treasurer shall note the payment and the manner thereof on the assessment roll and report the same to the board. [1911 c 23 § 59; RRS § 9835.]

Payment of assessment: RCW 91.08.390 through 91.08.460.

91.08.600 Purchase of filling material. At any time before the completion of excavations required for the construction, deepening or widening of a waterway under this chapter, when there will be surplus material dug or dredged from such waterway, any owner of land within the district, for the filling of whose land no provision has theretofore been made, may have such surplus material delivered upon his land for filling purposes upon paying the cost of such delivery in a sum to be fixed by the board. The sum so fixed shall be paid to the treasurer at such time and in such manner as the board may prescribe, and shall be credited to the district fund. [1911 c 23 § 60; RRS § 9836.]

91.08.610 Surplus money in district fund transferred to road fund. Should there be any money remaining in the district fund after the payment in full of all of the obligations of the district, it shall be transferred to and become a part of the road fund of the county. [1911 c 23 § 61; RRS § 9837.]

"County road fund" created: RCW 36.82.010.

91.08.620 Unclaimed funds, disposal of. Should any sum of money paid into court as compensation or damages for land or property taken or damaged in any condemnation proceeding under this chapter be uncalled for the period of two years, the county clerk shall satisfy the judgment therefor and pay the money in his hands to the treasurer for the road fund of the county. But upon application to the board of county commissioners within four years after such payment, the party entitled thereto shall be paid such money by the county without interest: *Provided*, That if any such party, being a natural person,

was under legal disabilities when such money was paid to the treasurer, the time within which he or his legal representatives shall make application for the payment thereof shall not expire until one year after his death or the removal of his disabilities. [1911 c 23 § 62; RRS § 9838.]

91.08.630 Waterways as highways—Control of. Every waterway constructed, deepened or widened under this chapter shall, from and after the completion thereof, be a public highway for vessels and an outlet for swamp or overflow water which may be drained into it from any lands in the district or tributary thereto, and shall be under the care and control of the board of county commissioners of the county as are other highways: *Provided*, That whenever any such waterway shall thereafter be included within the limits of any city or town, the care and control thereof shall pass to the corporate authorities of such city or town. [1911 c 23 § 63; RRS § 9839.]

91.08.640 Fees for serving process. The fees for the service of all process necessary to be served under the provisions of this chapter shall be the same as those for like services in other civil cases. [1911 c 23 § 65; RRS § 9841.]

Fees of county officers: Chapter 36.18 RCW.

91.08.650 Enforcement. The superior court may compel the performance of duties imposed by this chapter, and may on proper application therefor issue its mandatory injunction for such purpose. [1911 c 23 § 66; RRS § 9842.]

91.08.660 Construction—1911 c 23. This chapter shall not be held to be an exclusive method of constructing, deepening or widening such waterways, nor in conflict with any other method which may be provided by law. [1911 c 23 § 64; RRS § 9840.]

Chapter 91.14

PASSENGER WATERCRAFT FOR HIRE— OPERATION

Sections

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91.14.005 Purpose. The purpose of this chapter is to further the public interest, welfare, and safety by providing for the protection and promotion of safety in the operation of watercraft carrying passengers for hire on the rivers of this state. [1986 c 217 § 1.]

91.14.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Watercraft" means every type of watercraft carrying passengers for hire used as a means of transportation on a river, including but not limited to power boats, drift boats, open canoes, inflatable crafts, decked canoes, and kayaks.

(2) "Carrying passengers for hire" means carrying passengers by watercraft for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the watercraft. This shall not affect trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire. Individuals licensed under chapter 77.32 RCW and acting as a fishing guide are exempt from this chapter.

(3) "Operate" means to navigate or otherwise use a watercraft.

(4) "Operator" means any person operating the watercraft or performing the duties of a pilot or guide for one or more watercraft in a group.

(5) "Passenger" means every person on board a watercraft who is not an operator.

(6) "Rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of this state. [1986 c 217 § 2.]

91.14.020 Operation of watercraft. (1) No person may operate any watercraft in a manner that interferes with other watercraft or with the free and proper navigation of the rivers of this state.

(2) Every operator of a watercraft shall at all times operate the watercraft in a careful and prudent manner and at such a speed as to not endanger the life, limb, or property of any person.

(3) No watercraft may be loaded with passengers or cargo beyond its safe carrying capacity taking into consideration the type and construction of the watercraft and other existing operating conditions. In the case of inflatable crafts, safe carrying capacity in whitewater shall be considered as less than the United States Coast Guard capacity rating for each watercraft. This subsection shall not apply in cases of an unexpected emergency on the river. [1986 c 217 § 3.]

91.14.030 Watercraft rights of way. (1) Except as provided in subsection (2) of this section, watercraft proceeding downstream have the right of way over watercraft proceeding upstream.

(2) In all cases, watercraft not under power have the right of way over motorized craft underway. [1986 c 217 § 4.]

91.14.040 Operators—First aid card required—

Exception. (1) No person may operate on the rivers of this state a watercraft carrying passengers for hire unless the person has been issued a valid Red Cross standard first aid card or at least its equivalent.

(2) This section does not apply to a person operating a vessel on the navigable waters of the United States in this state and who is licensed by the United States Coast Guard for the type of vessel being operated. [1986 c 217 § 5.]

91.14.050 Safety equipment. While carrying passengers for hire on whitewater river sections in this state, the operator and owner shall:

(1) If using inflatable watercraft, use only watercraft with three or more separate air chambers;

(2) Ensure that all passengers and operators are wearing a securely fastened United States Coast Guard approved type III or type V life jacket in good condition;

(3) Ensure that each watercraft has accessible a spare type III or type V life jacket in good repair;

(4) Ensure that each watercraft has on it a bagged throwable line with a floating line and bag;

(5) Ensure that each watercraft has accessible an adequate first-aid kit;

(6) Ensure that each watercraft has a spare propelling device;

(7) Ensure that a repair kit and air pump are accessible to inflatable watercraft; and

(8) Ensure that equipment to prevent and treat hypothermia is accessible to all watercraft on a trip. [1986 c 217 § 6.]

91.14.060 Whitewater river sections—Use of alcohol prohibited—Watercraft to be accompanied by other watercraft. (1) Watercraft operators and passengers on any trip carrying passengers for hire shall not allow the use of alcohol during the course of a trip on a whitewater river section in this state.

(2) Any watercraft carrying passengers for hire on any whitewater river section in this state must be accompanied by at least one other watercraft under the supervision of the same operator or owner or being operated by a person registered under RCW 91.14.090 or an operator under the direction or control of a person registered under RCW 91.14.090. [1986 c 217 § 7.]

91.14.070 Whitewater river sections—Designation. Whitewater river sections include but are not limited to:

- (1) Green river above Flaming Geyser state park;
- (2) Klickitat river above the confluence with Summit creek;
- (3) Methow river below the town of Carlton;
- (4) Sauk river above the town of Darrington;
- (5) Skagit river above Bacon creek;
- (6) Suiattle river;
- (7) Tieton river below Rimrock dam;

(8) Skykomish river below Sunset Falls and above the Highway 2 bridge one mile east of the town of Gold Bar;

(9) Wenatchee river above the Wenatchee county park at the town of Monitor;

(10) White Salmon river; and

(11) Any other section of river designated a "whitewater river section" by the interagency committee for outdoor recreation. Such river sections shall be class two or greater difficulty under the international scale of whitewater difficulty. [1986 c 217 § 8.]

91.14.080 Death or disappearance from watercraft—Notification of authorities.

(1) When, as a result of an occurrence that involves a watercraft or its equipment, a person dies or disappears from a watercraft, the operator shall notify the nearest sheriff's department, state patrol office, coast guard station, or other law enforcement agency of:

(a) The date, time, and exact location of the occurrence;

(b) The name of each person who died or disappeared;

(c) A description of the watercraft; and

(d) The names and addresses of the owner and operator.

(2) When the operator of a boat cannot give the notice required by subsection (1) of this section, each person on board the boat shall either give the notice or determine that the notice has been given. [1986 c 217 § 9.]

91.14.090 Registration of persons carrying passengers for hire on whitewater river sections—List of registered persons—Notice of registrants' insurance termination—State immune from civil actions arising from registration.

(1) Any person carrying passengers for hire on whitewater river sections in this state may register with the department of licensing. Each registration application shall be submitted annually on a form provided by the department of licensing and shall include the following information:

(a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the registrant;

(b) Proof that the registrant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the registrant and the registrant's employees that result in bodily injury or property damage; and

(c) Certification that the registrant will maintain the insurance for a period of not less than one year from the date of registration.

(2) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.

(3) Any person advertising or representing themselves as having registered under this section who is not currently registered is guilty of a gross misdemeanor.

(4) The department of licensing shall submit annually a list of registered persons and companies to the department of trade and economic development, tourism promotion division.

(5) If an insurance company cancels or refuses to renew insurance for a registrant during the period of registration, the insurance company shall notify the department of licensing in writing of the termination of coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the registrant that on the effective date of termination the department of licensing will suspend the registration unless proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may suspend or revoke registration under this section if the registrant fails to maintain in full force and effect the insurance required by this section.

(6) The state of Washington shall be immune from any civil action arising from a registration under this section. [1986 c 217 § 11.]

91.14.100 Enforcement—Chapter to supplement federal law. (1) Every peace officer of this state and its political subdivisions has the authority to enforce this chapter. Wildlife agents of the *department of game and fisheries patrol officers of the department of fisheries, through their directors, the state patrol, through its chief, county sheriffs, and other local law enforcement bodies, shall assist in the enforcement. In the exercise of this responsibility, all such officers may stop any watercraft and direct it to a suitable pier or anchorage for boarding.

(2) A person, while operating a watercraft on any waters of this state, shall not knowingly flee or attempt to elude a law enforcement officer after having received a signal from the law enforcement officer to bring the boat to a stop.

(3) This chapter shall be construed to supplement federal laws and regulations. To the extent this chapter is inconsistent with federal laws and regulations, the federal laws and regulations shall control. [1986 c 217 § 10.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

91.14.110 Civil penalty. A person violating this chapter shall be subject to a civil penalty of up to one hundred fifty dollars per violation. [1986 c 217 § 12.]